CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

# Th7a

| | |
|---|---|
| Appeal Filed: | 12/17/98 |
| 49th Day: | 02/04/99 |
| Staff: | SM-SC |
| Staff Report: | 11/15/00 |
| Hearing Date: | 12/14/00 |
| Commission Action: | SI 02/03/99 |
| | Continued 05/13/99 |

**STAFF REPORT: REGULAR CALENDAR**
**COASTAL DEVELOPMENT PERMIT**

APPLICATION NO.: **A-3-SNC-98-114**

APPLICANT: **SNG Development Company (Ed Ghandour)**

PROJECT DESCRIPTION: Monterey Bay Shores Resort, a subdivision and development consisting of 495 units of mixed uses; a 217-room hotel, 100-unit Vacation Ownership Resort (timeshare), 45 visitor serving (rental pool) condominium units, and 133 residential units. Each of these facilities will be located on separate parcels created from the existing 39-acre parcel (approximately 32 acres of which are above the mean high tide line) as part of the project. A fifth parcel comprising the remaining 16.6 acres of the site (7 acres of which are below the mean high tide line) is proposed along the shoreline. Ancillary facilities include a restaurant/bar, conference center, tennis courts, pool, spa, and private recreation areas. The project also includes public access trails and a public recreation area, as well as 10.2 acres of restored and stabilized sand dune habitat.

The reduced project proposed by the applicant in April 1999, and considered by the Commission at its May 1999 meeting, is no longer offered by the applicant (please see page 4 of Sheppard, Mullin, Richter & Hampton letter dated October 5, 2000, attached as Exhibit 1).

PROJECT LOCATION: Northernmost parcel of Sand City west of Highway One, adjacent to the southern boundary of the former Fort Ord and northwest of the Highway One and Fremont Blvd. interchange (APN 11-502-014)

LOCAL APPROVALS: Sand City Coastal development Permit 97-04, Site Plan Permit 98-06, and Design Permit 98-06

FILE DOCUMENTS: Sand City Local Coastal Program; Executive Summary, Monterey Bay Shores Mixed Use Resort As Approved by Sand City City Council, December 21, 1998; Monterey Bay Shores Coastal Commission Appeal Packet, City of Sand City, December 31, 1998; Sand City Notice of Final Local Action, December 1, 1998; Vesting Tentative Map, as revised February 1998; Draft and Final Environmental Impact Reports, April and October, 1998; Habitat Protection Plan for the Monterey Bay Shores Project, September 12, 1997; Technical Reports Transmitted by the Larry Seeman Company, as listed in his letter of January 7, 1998; Sand City Local Coastal Program Amendment Files No. 2-97 and No. 1-93; Report to the City of Sand City on the Implementation of Its Local Coastal Program, California Coastal Commission, September 21, 1990; Proposed Findings on Consistency Determination CD-16-94 for the Disposal and Reuse of Fort Ord, California Coastal Commission, Adopted May 1994; Monterey Bay Shores Combined Development Permit Application: Volume I (Transmittal and Applications) and Volume III (Additional Reference Documents); letters from Haro, Kasunich and Associates, Inc. dated May 22, 1997, August 12, 1997, October 6, 1997 February 10, 1998, and, May 5, 1998; Monterey Bay Shores Draft Preliminary Economic and Financial Feasibility Analysis, McGill Martin Self, Inc., December 1998; Cooperative Agreement #05-CA-033 between the California Department of Transportation and Sand City, and Sand City Resolution 96-05 authorizing the City Administrator and Mayor to enter into this agreement; Draft Project Study Report On Route 1 Corridor In the Cities of Sand City and Seaside In Monterey County From Highway 218 to the Fort Ord Main Entrance, February, 1999; Habitat Conservation Plan and Implementation Agreement, Monterey Shores Project, March, 1999; Administrative Draft of the Sand City Coastline Habitat Conservation Plan, April 1, 1999; Coastal Development Permit Appeal File No. A-3-SNC-87-131 regarding the Lone Star Reclamation Plan for the project site; Update Geotechnical Report for Monterey Bay Shores Mixed Use Resort, Haro, Kasunich and Associates, October 2000.

---

**PROCEDURAL NOTE**

On February 3, 1999, the Coastal Commission determined that an appeal of the Coastal Development Permit approved by the City of Sand City for the subject project raised a substantial issue with respect to the project's conformance with the City's certified Local Coastal Program. As required by Section 13115(b) of the California Code of Regulations, the Commission must now consider the project in a De Novo hearing. The applicant previously requested a postponement of the De Novo hearing from the March 1999 Commission meeting pursuant to Section 13085(a) of the Commission's Administrative Regulations. The Coastal Commission subsequently continued the De Novo hearing on May 13, 1999.

**TABLE OF CONTENTS**



**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission **DENY** a coastal development permit for the proposed development on the grounds that the project is inconsistent with the Sand City certified LCP, as well as with Coastal Act policies regarding public access and recreation. Specifically:

- The project threatens the biological continuance of environmentally sensitive dune habitat areas on and adjacent to the project site, inconsistent with LCP Policy 3.3.1, which requires new visitor-serving and recreational development to protect natural resources; LCP Policy 4.3.20, which prohibits development adjacent to environmentally sensitive habitats that would significantly degrade such habitats, and requires such development to be consistent with the biological continuance of adjacent habitat areas; LCP Policy 4.3.21.d, which restricts land disturbance and the removal of indigenous plants to the minimum amount necessary for structural improvements; and, LCP Policy 6.4.1, which requires that development intensities be limited to those that adequately address constraints associated with sensitive habitats.

  - Over 30 acres the site's dune habitat will be disturbed during construction. This will result in the removal of all 58 seacliff buckwheat plants (host plant for the federally endangered Smith's blue butterfly) that currently exist on the site, and approximately 2.6 acres of vegetation currently containing the federally threatened Monterey spineflower. Project construction will also result in the alteration and removal of dune landforms that have been used by the federally threatened Western snowy plover as nesting sites.

  - The proposed mitigation (habitat restoration and management of most of the remaining 19 acres of the site, and the provision of two "biological stewards") does not assure the effective protection and biological continuance of the site's sensitive habitats, or of other sensitive dune habitats adjacent to the site. The biological value of the proposed restoration areas and

existing habitats adjacent to the site will be diminished by the increased use of the area, as well as the noise, glare, and activity generated by the development. In addition, the removal of the existing buckwheat plants, which have been identified as supporting a small population of Smith's blue butterfly, may result in the permanent loss of this population, regardless of the proposed buckwheat replacement. Similarly, the significant alteration of landforms used by the Western snowy plover as nesting sites may reduce future nesting on the site by this federally threatened species.

- The permanent net loss of 13 acres of dune habitat (corresponding to the footprint of the development[1]), and the diminishment of habitat values in the area surrounding the development, jeopardizes the protection, restoration, and enhancement of the sensitive habitat values of the site and the Monterey dune system. Other than the restoration proposed on the remainder of the site, no compensation for the loss of this habitat, such as the protection of an equivalent or greater amount of off-site dune habitat, has been provided. In addition, the development of this dune habitat area will be a barrier to connecting restored habitat on the Monterey Peninsula Regional Park District site south of the project, and the dune restoration area planned as part of Fort Ord reuse.

- Consultations with the U.S. Fish and Wildlife Service critical to addressing the project's direct and cumulative impacts on federally threatened and endangered species, including the Western snowy plover and Smith's blue butterfly, have yet to be initiated by the applicant. The information generated through this consultation process will be essential to determine whether the project is compatible with the biological continuance of sensitive habitat areas on and adjacent to the project site, and must therefore be coordinated with Coastal Development Permit review.

- The project is inconsistent with LCP Policies 4.3.31 and 6.4.11 because the availability and adequacy of the proposed water source to serve the development have not been appropriately established. The applicant has not obtained the necessary permits from the Monterey Peninsula Water Management District to utilize groundwater from the Seaside aquifer managed by the District[2], and has not obtained the Domestic Water Supply Permit required by the State Department of Health Services. As detailed by the Final EIR for the project, current extractions of the Seaside exceed its estimated safe yield. The project would exacerbate this apparent overdraft situation and increase the potential for seawater intrusion.

- The 4 to 7 story development does not conform with LCP visual resource protection policies because it exceeds LCP height limitations established by LCP Policy 6.4.5; may encroach within the open view corridor established by LCP Policy 5.3.2; will significantly detract from the natural scenic qualities of the area, inconsistent with LCP Policies 5.3.1; and, is visually incompatible with the surrounding area and community character, in conflict with LCP Policy 5.3.4.a. The

[1] (As stated on page 160 of the Final EIR, the project site's wildlife habitat would be permanently reduced by 13 acres.)
[2] The Monterey Peninsula Water Management District denied the application for a Water Distribution Permit on October 26, 2000.

visual impact of the project, as viewed from the beach and Monterey Bay, will be exacerbated by the proposed landform alterations that will lower the height of the existing foredune area. Such landform alterations are contrary to LCP Policies 5.3.4.f and 5.3.10, which require the use of existing dunes as visual barriers.

- Significant issues related to shoreline hazards have yet to be effectively resolved. Contrary to LCP Policy 4.3.9a, project setbacks have been based on a certain distance from the Mean High Tide Line, rather than from the dune scarp or blufftop as required by this policy. Other unresolved issues relate to the hazards posed by tsunamis and storm wave runup, particularly in light of the proposal to lower the foredune area of the site. As a result, the project can not be found consistent with LCP Policy 4.3.8 requiring new development to minimize risks from flooding hazards, LCP Policy 4.3.10 encouraging development to be clustered away from potentially hazardous areas, and LCP Policy 4.3.11 prohibiting development in the tsunami run-up zone unless adequately mitigated.

- There are significant outstanding concerns regarding the impact of the traffic generated by the project on local intersections and Highway One which preclude a finding of compliance with LCP Policies 6.4.11 and 6.4.24 requiring adequate circulation for the project. As a result of the traffic impacts generated by the recently constructed Edgewater Shopping Center (directly across the freeway from the proposed project) and other anticipated development in the area (including the reuse of the former Fort Ord), Sand City, in coordination with the California Department of Transportation (Caltrans), is in the process of identifying the roadway modifications and expansions necessary to provide for adequate circulation. The City has required the Monterey Bay Shores Resort project to financially contribute a "pro-rata share" of the "funding shortfall" for the implementation of the roadway improvements, not to exceed $1.5 million. These improvements will be subject to future reviews and approvals (including coastal development review, and review and approval by Caltrans), and may pose adverse impacts to coastal resources. Until the improvements to Highway One and local roadways necessary to accommodate existing and anticipated future development have been identified and approved by the relevant regulatory agencies, it can not be concluded that adequate circulation has been provided for. Moreover, until these improvements are constructed, there does not appear to be adequate circulation to accommodate the project.

- While the project includes public access and recreation improvements, it can not be concluded that these improvements, in combination with the intense development proposed, are consistent with the protection of natural resources, as required by Coastal Act Section 30210 and LCP Policy 2.3.9. Resolution of this issue must be coordinated with Endangered Species Act consultation required for the project, which the applicant has yet to initiate.

Given the significant adverse impacts to coastal resources posed by the project, and the absence of an approved method to supply it with water, it is impossible to conclude that the project is consistent with the Sand City LCP and the public access and recreation policies of the Coastal Act. In light of the lack of fundamental information needed to resolve these issues (e.g. more detailed habitat evaluation, Water Distribution Permit, additional geotechnical analyses), and the major revisions

required to bring the project in conformance with LCP visual protection standards (e.g., considerable reductions in the amount of landform alteration and the height and size of the proposed structures), denial, rather than a condition approval, is the only available option. This does not mean that no development can occur on the site. Rather, it is essential that the project be redesigned, in coordination with the additional information required to respond these coastal resource issues. Towards this end, the findings for denial identify the specific information and resource constraints that need to be addressed by any future development proposal on the site in order to establish LCP and Coastal Act consistency.

## I. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following resolution for **denial** of the permit:

> The Commission hereby **denies** a permit for the proposed development on the grounds that it would not be in conformity with the certified Sand City Local Coastal Program, is inconsistent with the public access and recreation policies of the California Coastal Act, and will have a significant adverse impact on the environment within the meaning of the California Environmental Quality Act.

**MOTION**:

> I move that the Commission approve Coastal Development Permit No. A-3-SNC-114 for the Monterey Bay Shores Resort project as approved by the City of Sand City.

Staff recommends a **NO** vote on the motion. A majority of the Commissioners present is required to pass the motion.

## II. FINDINGS AND DECLARATIONS

### A. Project Background

The project was conditionally approved by the Sand City City Council on December 1, 1998. The 59 conditions attached to the locally approved permit are attached as Exhibit 2. Some notable conditions of approval that must be satisfied prior to the issuance of the permit include: that the developer enter into an agreement with the City providing for implementation of a yet to be developed site-specific or city-coastal wide Habitat Conservation Plan approved by the U.S. Fish and Wildlife Service (Condition 32); and, that the Monterey Peninsula Water Management District confirm the developer's right to use water from on-site wells and that such wells are capable of meeting the requirements of the project (Condition 42). Also noteworthy is Special Condition 24, which requires that the City Engineer approve a final geotechnical investigation for the project prior to the recordation of the final subdivision map.

As approved by the City, the project was reduced from its original proposal of 597 units to 495 units. This action also represents a reduction from the "environmentally superior alternative" identified by the Environmental Impact Report (EIR) for the project (Alternative C, involving 513 units). As part of

this reduction, the City required that the design of Alternative C be modified by lowering the northern quarter of the residential condominium from 6 stories to 5 stories; lowering the grade elevation of the six story hotel building by 10 feet (from approximately 15 feet above mean sea level at its lowest point to approximately 5 feet above mean sea level); lowering the 8 story vacation ownership (timeshare) building to 7 stories; and lowering the 5 story visitor serving recreation building to 4 stories.

Although the action by the Sand City City Council was an important step in the effort to resolve project inconsistencies with the Sand City LCP, significant inconsistencies remain, as detailed in the findings of this staff report. These inconsistencies were first reported to the Commission at its meeting of May 13, 1999, at which the Commission continued the hearing in order to provide the applicant with an opportunity to provide the information necessary to resolve these issues. Towards this end, staff provided the applicant with a comprehensive list of the information needed to establish consistency with the Sand City LCP (please refer to the letters attached as Exhibit 17).

Approximately one year later, on April 27, 2000, staff informed the applicant of its intention to schedule the continued De Novo hearing for the June 2000 meeting in Santa Barbara, noting that a response to the requested information had not yet been received. At the request of the applicant, a meeting was convened to discuss the status of the requested information items. At that meeting staff accommodated a postponement of the continued hearing with the understanding that the requested information would be provided by the applicant in the near future and in time for a December hearing in San Francisco.

On August 2, 2000, Commission staff reminded the applicant that the De Novo hearing would be scheduled for the Commission's December 2000 meeting in San Francisco, and established a deadline of October 6, 2000 for the submission of the requested information. On October 6, 2000 staff received a letter from the applicant's attorney, attached as Exhibit 1, which did not include any of the requested information. On October 16, 2000, staff received a copy of an Updated Geotechnical Report. On October 26, the Monterey Peninsula Water Management District denied the Waster Distribution Permit required for the project. All other information items have yet to be provided.

B. Project Description

The Sand City City Council approved the Monterey Bay Shores Resort project on December 1, 1998. On February 3, 1999, the Coastal Commission determined that the two appeals of this approval raised a Substantial Issue. The appealed, locally approved project involves the construction and operation of a 495 unit mixed use resort consisting of a 217-room hotel, a 100-unit vacation ownership resort, 45 visitor serving (rental pool) condominium units, 133 residential condominium units, and a conference center. The LCP designates this site for hotel, visitor-serving residential, and residential uses, with a combined density not to exceed 650 units. However, LCP Policy 6.4.1 specifically recognizes that these maximum densities may not be realized due to the need to address the coastal resource constraints such as habitat, natural hazards, and public access and recreation needs, as further discussed in subsequent findings of this report.

Ancillary facilities proposed as part of the project include a restaurant/bar, tennis courts, a pool, spa, courtyard areas, and private recreation areas. The project also includes public access improvements and dune restoration areas, described in more detail below. According to page 160 of the Final EIR for the project, total site coverage is 13 acres. The remaining 19 acres of the site (above the mean high tide line) will be placed in public access and conservation easements.

The vacation ownership resort units would be one to two bedroom units with kitchenettes, available to club members through purchase of a membership, and available to the public when not occupied by a club member. As established by LCP Amendment 2-97 and conditioned by the City, both the vacation ownership resort units and the visitor serving residential units (available to the general public on a rental basis) are subject to a maximum stay of 29 consecutive days and 84 total days per year.

**Subdivision**

The project also includes the subdivision of the site (a single 39.04 acre parcel, 32.09 acres of which are above the mean high tide) into 5 separate parcels, each of which will contain a particular land use (please see Exhibit 4). The Vacation Ownership Resort (VOR) building will be located on Parcel 1, a 5.72 acre lot, 3.95 acres of which will be placed in a conservation easement. The hotel and conference center will be on Parcel 2, a 7.2 acre lot, with 1.13 acres subject to a conservation easement. Parcel 3 will contain the residential condominiums, and will be 6.32 acres in size, 2.83 of which will be placed in conservation and public access easements. Parcel 4, a 16.66 acre lot (6.96 acres of which are below the mean high tide line) is located along the shoreline portion of the property. Approximately one-half an acre of parcel 4 will be for private recreation, and the remainder will be placed in conservation and public access easements. Parcel 5 will contain the Visitor Serving Rental (VSR) units, and will be 3.14 acres in size, with 1.14 acres subject to a conservation easement.

**Major Structures**

As approved by the City total building and roadway coverage would consume approximately 13 acres of the site, or about 40% of the portion of site above the mean high tide line. The approved hotel, which has a building coverage of approximately 39,650 square feet[3], will have six stories and a maximum height of approximately 75 feet above finished grade. Ancillary facilities associated with the hotel include a restaurant, bar, tennis courts, a pool, and a separate two-story conference center building with a footprint of approximately 32,900 square feet. The 7-story VOR building will have a footprint of approximately 44,850 square feet and a maximum height of approximately 85 feet above finished grade. Residential condominiums will be within a 5 – 6 story structure with a footprint of approximately 56,350 square feet and a maximum height of approximately 65 feet above finished grade. The VSR Building will be 4 stories tall, with a maximum height of about 55 feet above finished grade and a footprint of approximately 18,760 square feet. Almost all of the parking to serve the development, as well as some public parking, will be underground, beneath the structures described above. One parking structure will have one level that extends above ground, with a footprint of approximately 18,530 square feet.

[3] Building coverage figures identified in this paragraph were obtained from the project's Vesting Tentative Map, as revised February 1998.

**Roadways and Paving**
Access to the site will be gained by extending Sand Dunes Drive along the eastern edge of the property, from its current terminus near the Fremont Boulevard off-ramp. This roadway extension will continue to the northern end of the property, where 29 "overflow and public parking" spaces will be installed (Exhibit 4). A Class 2 bike path (i.e., striped bike lane) will be provided along this roadway extension until the entrance to the development, where a Class 3 bike path (i.e., signs only) will continue to the end of the extended roadway at the northeast corner of the site. As required by Condition 3 of the City's approval, the entrance to the development must be moved approximately 50 feet north in order to avoid impacting the dune restoration area specifically designated by the LCP. In total, the project involves approximately 107,354 square feet (about 2.5 acres) of new roadway[4].

**Grading**
Site preparation activities associated with the project include grading, excavation, and recontouring of approximately 94% (30 acres) of the portion of the site above the mean high tide line (i.e., grading of all areas of the site inland of the 20 foot contour, other than the upper portion of the large dune at the site's southeast corner). As approved by the City, approximately 880,000 cubic yards of sand will be removed from the development area and foredune of the site. An unquantified portion of the excavated sand which will be placed on the beach, above the mean high tide line, outside of the snowy plover nesting season. The remainder of the sand will be removed from the site, and deposited at unidentified location(s).

As approved by the City, the grading would result in a lowering of the foredune area of the site, which currently ranges from 35 feet to more than 60 feet above mean sea level to a continuous 22 foot elevation (Exhibit 20).

**Utility Development**
The only public service infrastructure currently in existence on the site is a well last used for sand mining/industrial purposes, which ceased in 1986. The project involves the conversion of this well to a domestic well, the establishment of a secondary on-site well, and the installation of a 450,000 gallon water storage tank (70 feet in diameter by 16 feet in height) and waterlines to serve the project. The proposed use of the well, and the construction of the water system, requires a permit from the Monterey Peninsula Water Management District, which was denied by the District on October 26, 2000.

The applicant intends to form a private mutual water company to distribute domestic service within the project. This will require a permit from the state Department of Water Resources. Sewer service will be provided by the Seaside County Sanitation District, and require the extension of sewer lines from the project to the sewer main constructed at the Edgewater Shopping Center, directly across Highway One. Water and sewer lines, as well as other utility lines (i.e., electricity, gas, telephone, cable television) will be extended to the site underground, primarily beneath the proposed roadways. Storm drainage will controlled by routing runoff from building roofs and other impervious surfaces to an underground collection system, through an oil-water separator, to a percolation basin, which, as

[4] Total roadway coverage per the project's Vesting Tentative Map, as revised February 1998.

approved by the City, would be located near the northern site boundary, in an area designated for public recreation by the LCP. This stormwater percolation basin is proposed to double as a habitat restoration area.

**Public Access Improvements**
As detailed in the project's Access, Signage, and Planting Plan, public access to the beach will be provided along the northern boundary of the property, on a concrete walk/service road that will transition into a boardwalk leading to a public vista point/gazebo on the bluff edge, then down to the beach. Twelve (12) public access parking spaces will be provided at the northeast corner of the project site, where there will be a gate operated by the resort restricting public access to daylight hours. The public access route and the portion of the site seaward of the coastal bluff edge (20 foot contour) will be placed in a public access easement, and provide lateral access along the beach. The City has also conditioned the project to include a public access easement along the coastal bluff, with a minimum width of 20 feet, to allow lateral bluff top pedestrian access across the project site. Access will be managed through an interpretive signing program, and by a full-time biological steward to manage snowy plover and other sensitive habitat areas on the property (required by condition 16.b. of the City's approval). An additional biological steward, to monitor and protect sensitive habitats in other areas of the City, will be provided by the City, and funded in part by the Transient Occupancy Taxes generated by the project.

**Revegetation**
The project also includes a dune restoration program intended to restore and protect dune habitats on 10.2 acres of the site that will be placed in a conservation easement. Additional dune revegetation will take place within the additional 8.8 acres of the site that will be subject to a public access easement. The majority of such revegetation will take place on graded, reshaped, or built dune surfaces, rather than on dune surfaces as they presently exist. The details of this program, and its consistency with LCP requirements, are detailed in the environmentally sensitive habitat findings of this report.

C. Project Location

The project is located on the northernmost parcel of Sand City west of Highway One (Exhibit 3), which has previously been referred to as the Sand City Lonestar site, or the Dezonia/StateParks Foundation site, on the basis of past sand mining activities and ownerships. The 39.04 acre site, of which 32.09 acres lies above the mean high tide line, includes approximately 1,500 linear feet of shoreline, and approximately 4 acres of beach area[5]. It is adjacent to the southern boundary of the former Fort Ord, which is planned for eventual conversion to a State Park. To the south, the site is bordered by a former dumpsite that has been purchased and restored for open space and recreation purposes by the Monterey Peninsula Regional Park District. The Southern Pacific (now Union Pacific) Railroad and Highway One border the site to the east, and the Monterey Bay lies to the west. In a regional context, the project site is within the Monterey Bay State Seashore, which is comprised

[5] As presented on page 19 of the project's Habitat Protection Plan, the portion of the site between the mean high tide line and the existing 20-foot elevational contour constitutes 4.2 acres.

of the dune system extending from Monterey Harbor to the Salinas River. The habitat values of this dune system and of the project site are described in following findings regarding environmentally sensitive habitat areas.

The project site was previously leased to Lone Star Industries, Inc. for sand mining purposes, which ceased in 1986. As a result of these previous sand mining activities, portions of the site's natural topography has been significantly altered (particularly the borrow area, which remains a sand pit), and the site's vegetative cover significantly reduced. As required by the State of California's Surface Mining and Reclamation Act and City Ordinance 84-3, Lone Star Industries prepared a reclamation plan, which was conditionally approved by the City in 1987.

In reference to the reclamation plan, page 20 of the Final EIR for the Monterey Bay Shores Resort project states:

> After reviewing the Reclamation Plan and conducting site reconnaissance, the City Engineer concluded that the majority of the Plan has been implemented. Based on his observations, it appears that the only portion of the Plan that has not been implemented is site regrading. …In addition, the City's authorization of the Plan was conditioned to require revegetation of the site.
>
> …The purpose of the regrading plan contained in the Reclamation Plan was to minimize hazards that can occur on a site with steep unnatural slopes. The grading that will be carried out as part of the project will accomplish this goal as well.
>
> Authorization of the proposed project's grading plan will meet the intent of the City's original approval of the Reclamation Plan and the standards of the State Mining and Geology Board Reclamation Regulations. In addition, the project's proposed Habitat Protection Plan includes a revegetation program that will satisfy the City's January 20, 1987 permit condition.

However, neither the project EIR nor the City's approval address the potential increase in the current habitat value of the site if the regrading and revegetation associated with the Reclamation Plan had been completed as required by the locally approved Coastal Development Permit.

D. LCP Background

The Sand City Local Coastal Program was certified in the mid-1980's as conforming with, and being adequate to carry out, the Chapter 3 policies of the Coastal Act. The LCP contains broad policies that call for the protection of coastal resources, including sensitive habitats and visual resources. At the same time, it includes provisions for maximum levels of development which, based on current knowledge of the sensitive dune resources within the City's coastal area, are suspect in terms of their compliance with the broader resource protection requirements of the LCP and the Coastal Act. In an attempt to address these policy concerns raised by the dated certified LCP, the Commission undertook

and adopted a periodic review in 1990. This report contains various recommendations on how the LCP could be revised to enhance its ability to carry out Coastal Act objectives.

Similarly, in an effort to expand the area of the City west of Highway One where public parks and open spaces would be a permitted use, the Monterey Peninsula Regional Park District (MPRPD) initiated efforts to amend the City's LCP in 1989. This effort was accomplished in part in 1995, when the Commission adopted LCP amendment No. 1-93 requested by MPRPD.

During the period in which the Commission was considering MPRPD's request to amend the Sand City LCP, a Memorandum of Understanding (MOU) between the City, MPRPD, and the California Department of Parks and Recreation (State Parks) was developed. The MOU was a significant step in resolving a longstanding dispute between the City and MPRPD regarding land use in the area west of Highway One, and facilitated Commission approval of LCP Amendment 1-93. The approval of this amendment resulted in a significant expansion of areas within the City's coastal zone on which public parks and open space could be pursued. City staff estimates that about 80% of the City's coastal zone area west of Highway One will be dedicated to open space uses.

As part of the MOU, MPRPD modified their request to amend the LCP in a manner that would establish public parks and open space as an allowed use in all areas of the City west of Highway One, by excluding the three parcels being contemplated for future development by the City. These three sites included the Sterling site immediately north of Tioga Avenue, for which there was a Coastal Development Permit authorizing 136 unit hotel/conference center[6]; the site immediately North of the Sterling site, owned by the Sand City Redevelopment Agency; and the site of the currently proposed project. In specific reference to the site on which the Monterey Bay Shores Resort is proposed, the MOU states:

> During the active period of the [private developer's] option [to purchase the property] (including any extension of said option), or in the event the option is exercised, CDPR [State Parks] and DISTRICT [MPRPD] agree to recognize and respect the option agreement and the option holder's right to pursue development of the Lonestar site consistent with the LCP. During the active period of the option, CDPR and DISTRICT further agree not to acquire title to any portion of the Lonestar site unless specifically requested to do so in writing by the option holder.

Thus, the provisions of the MOU applicable to the project site were limited to the potential for MPRPD or State Parks to attempt to acquire the site during the period in which the developer had an option to purchase the property. It is also important to note that the Commission is not signatory to the MOU, and that the MOU is not a part of the certified LCP. The standard of review that must be applied to the project is the Sand City certified LCP and the Coastal Access and recreation Policies of Chapter 3 of the Coastal Act.

E. Environmentally Sensitive Habitats

[6] This permit expired in March 1999.

1. LCP Policies and Standards

The certified Sand City LCP implements the environmentally sensitive habitat area (ESHA) policies of Coastal Act Section 30240 through broad policies requiring the protection of natural resources and dune habitats, and more specific policies that require the use of development standards to protect ESHAs. First, consistent with the Coastal Act definition of an Environmentally Sensitive Habitat Area, the LCP defines ESHAs as follows:

> Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which easily could be disturbed or degraded by human activities and developments (Certified Implementation Plan, pg. 21).

Second, with respect to general ESHA protection, LCP Policy 3.3.1 provides:

> Visitor-serving and public recreational uses are given priority west of State Highway One, as designated in the Land Use Plan Map in Section 6.0. *Development of these uses shall be consistent with the protection of natural and visual resources* [emphasis added].

Similarly, in discussing appropriate development densities for the Monterey Bay Shores site, LCP Policy 6.4.1 states in part:

> … The described [LCP development] densities, both above and below, represent a maximum. As required by applicable policies of the LCP, permitted development *intensities shall be limited to those which adequately address constraints including*, but not limited to: public access and recreation needs (including adequate public access and recreation facilities inland of the 50-year erosion setback line); natural hazards*; dune habitats and their appropriate buffers*; and natural landforms and views to the Bay. …[emphasis added].

Third, with respect to more specific protections, LCP Policy 4.3.21 states:

> Protect environmentally sensitive habitat areas by developing and implementing standards for development (including vegetation removal, excavation, grading, filling and the construction of roads and structures). Standards should include, but may not be limited to:
>
> a) encourage retention of open space through deed restrictions or conservation easements;
> b) restrict land disturbance and the removal of indigenous plants to the minimum amount necessary for structural improvements;
> c) require incorporation of appropriate mitigation measures such as setbacks, buffer strips, landscape plans, drainage control plans and restoration;

d) where appropriate and feasible, allow the exchange of existing resource areas for other open space areas that would provide a more logical location for open space and that could be planted with those species found in the resource area; and
e) require landscaping with native coastal plants in development proposals.

Finally, LCP Policy 4.3.20 requires, in relevant part, that ESHAs be protected as follows:

f) New uses proposed adjacent to locations of known environmentally sensitive habitats shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such areas.

Policy 4.3.20 also calls out five specific dune habitat areas that were known at the time of LCP certification, within which specific development standards apply, including restrictions that only resource dependent uses be allowed within certain areas.

2. Project Analysis

The applicant's site is located in the Monterey Bay Dunes Complex (also known as the Seaside dune system). Geologists (Cooper et al) describe the dune system as having three main components, each layered upon one another with the oldest layers on the bottom: youngest are the Recent dunes, such as those found around Moss Landing and which are still in the process of building. The most ancient are the pre-Flandrian dunes, mostly located inland from Highway 1 and falling outside the coastal zone.

The highest and most dramatic component of the system is the strand of Flandrian-era dunes, named for an Ice Age event known as the Flandrian Transgression. These high dunes run as a narrow but continuous formation along the shoreline of Monterey Bay, beginning at the Salinas River and reaching approximately 13 miles to Monterey Harbor. The dune system traverses a variety of governmental jurisdictions: Monterey County, the City of Marina, California State Parks, U.S. Army (former Fort Ord), City of Sand City, Monterey Peninsula Regional Park District, City of Seaside, the City of Monterey and the U.S. Naval Postgraduate School. The Coastal Zone boundary through this region primarily follows Highway 1 which, for the most part, and in the case of this project, is the first public road paralleling the sea. The remnant pre-Flandrian dunes inland of Highway 1 in the cities of Seaside and Sand City have suffered severe impacts and are mostly already developed. While the high Flandrian dunes are also impacted, at present several largely undeveloped sections remain along the shoreline (including the project site).

***a. The Project Site Is an Environmentally Sensitive Habitat Area.***

**The Dunes System**

The project site is located within the Flandrian component of this dune complex. This dune system component, including the project site, must be considered environmentally sensitive habitat for several reasons. First, coastal dunes are an extremely limited environmental resource of statewide significance. Oceanfront dunes provide unique, sensitive habitat values. Throughout its history, the Commission has placed high priority on the protection and preservation of dune systems. On the

Central coast, this includes the Nipomo dunes , Asilomar Dunes, and the Del Monte Dunes (also within the Monterey Dunes complex).

At 40 square miles, the Monterey Bay dune complex is one of the largest remaining coastal dune fields in California. However, less than half of the dune field has survived urbanization, conversion to military or agricultural uses, sand mining, and shoreline erosion.

According to the Technical Review Draft for the Smith's Blue Butterfly Recovery Plan, U.S. Fish and Wildlife Service:

> More than 50 percent of the Seaside [Monterey Bay] dune system has been destroyed or altered significantly by sand mining, urbanization, military activities, construction, and the introduction of two aggressive exotic plants, European marram grass (Ammophila arenaria), and iceplant (Mesembryanthemum spp.). Even considering this, these dunes are the largest and best preserved of any of the central California dune systems except for the Oso Flaco Dunes near San Luis Obispo. The dune system at San Francisco has been almost totally destroyed (Powell, 1981).

The significance of the natural resource values of the Monterey Bay dunes – particularly the Flandrian component along the shoreline -- is well recognized, as is the potential to restore and enhance these values in degraded areas (see more detail below). Several major dune restoration programs are underway in the vicinity of Sand City. A significant restoration effort has taken place immediately south of the proposed project, on a former dump site that was acquired and remediated by the Monterey Peninsula Regional Park District. To the north of the project site, State Parks intends to protect and restore 700 acres of dune habitat on dunes of the former Fort Ord seaward of Highway One. Other notable restoration areas within the dune system include State Park's restoration efforts at Monterey, Seaside, Marina, and Moss Landing State beaches, and the Navy's restoration of 44 acres of beach area at the Naval Post Graduate School in the City of Monterey.

One of the most critical functions of the dune system is its role as habitat for very unique flora and fauna. These are species which are specially adapted to the conditions and opportunities found in the dunes. Dune plants in particular play a special role by both stabilizing the dunes from the effects of wind erosion, and hosting rare fauna. However, as the natural dune system has been reduced and fragmented, the risk of extinction has increased for several species. Thus, each new impact within the dunes system has and will continue to contribute to the cumulative decline of these species.

Specifically, several native plants known to occur in the dunes are either already listed, or are on the candidate list for the federal register of endangered and threatened species. These include the Seaside bird's beak (*Cordulanthus rigidus littoralis*), sand gilia (*Gilia tenuiflora arenaria*), Sandmat manzanita (*Arctostaphylus pumila*), Eastwood's ericameria (*Ericameria fasciculata*), coast wallflower (*Erysimum ammophilum*), Menzies wallflower (*Erysimum menziesii*)and Monterey ceanothus (*Ceanothus rigidus*). The Seaside bird's beak is protected under the California Plant Protection Act of 1977. All seven species are recognized as rare by the California Native Plant Society. The sand gilia is both state-listed and federal-listed. Another sand-stabilizing plant species,

the Monterey spineflower (*Chorizanthe pungens var. pungens*), is also found in the Monterey Bay dunes (including the project site), and has been listed in the Federal Register as an endangered species (U.S. Fish & Wildlife Service notice of February 14, 1994).

The U.S. Fish & Wildlife Service has also listed the Western snowy plover as a threatened species. These birds forage along the shoreline and nest in the foredunes of the Flandrian system. The plovers are known to nest in various areas of the dunes, including the project site, and have been the focus of significant conservation efforts by the State Dept. of Parks and Recreation (see below for more detail). According to staff of the U.S. Fish and Wildlife Service, it is expected that the dunes within Sand City will provide important breeding habitat as the species recovers.

Another species of concern existing within the dune system is the Smith's blue butterfly (*Euphilotes enoptes smithi*), a federally protected animal species listed as endangered by the U.S. Fish and Wildlife Service. Coast buckwheat (*Eriogonum parvifolium* and *E. latifolium*), are host plants to the Smith's blue butterfly, and occur in clusters that support localized populations of the butterfly. The black legless lizard (*Anniella pulchra nigra*), another native species of the Monterey Bay dunes, has previously been a candidate for federal listing as endangered, and is considered a Species of Concern by the California Department of Fish & Game because of its limited distribution.

Finally, while the distribution of these dune plants and animals may appear sparse to the uninitiated, over time they can collectively be expected to utilize the entire available dune surface. This is because the Flandrian component of the dunes complex is a dynamic system. The dunes present a rather harsh and difficult growing environment, where the wind keeps shifting the shape of the ground, rainfall rapidly percolates out of reach, and, lacking a distinct topsoil horizon, nutrients are quickly exhausted. Thus, a plant like Monterey spineflower may over a year or two use up the available moisture and nutrients at a particular site, and by means of wind-blown seed "move" to a neighboring area. In this simplified model, the original site remains a bare sand surface until life's necessities again accumulate at the original site—thereby allowing recolonization and repeating of the cycle. Therefore, the overall growing area ("habitat") needed over the long run is vastly larger than the area occupied by the plants at any one "snapshot" in time. This also helps explain why the entire dune surface—not just the locations where the plants (and animals) are found in any one particular year—must be considered as ESHA. More detail on this aspect of the dunes ESHA is presented in the discussion of the project site below.

**MBS Project Site**

Under Sand City's certified LCP, the entire Monterey Bay Shores (MBS) development site is an environmentally sensitive habitat area. First, as discussed above, the MBS site is part and parcel of a significant and sensitive ecological system -- the Flandrian component of the Monterey Bay dunes complex. Since certification of the Sand City LCP in 1985, much has been learned about the important role of specific areas within the dunes, and how both vegetated and barren sand surfaces contribute to the overall functioning of the dunes habitat system - even when these areas are to one degree or another degraded. As mentioned above, new development within the dune system contributes to the cumulative fragmentation and reduction of this unique sensitive habitat.

According to U.S Geological Survey data, the crest of the dune on the MBS site, rising directly from sea level to 135 feet, is the highest point shown within the Flandrian dune component. At just over 39 acres, this also the largest parcel on the Sand City shoreline, and compared to other sites there are proportionately fewer inroads by invasive non-indigenous plants. This means that despite its past history of sand mining, this site has a great range of potential habitat niches. Because there are no existing roads, buildings or other solid surfaces, all portions of the site are comprised of sandy surfaces. These sandy surfaces are practically a standing invitation to recolonization by the dune dwellers that make a specialty of the Flandrian-era dunes.

Therefore, it is no surprise that in the past decade, such a recolonization trend is strongly evident. As previously noted, when the Sand City LCP was certified in 1985, no sensitive habitat areas were specifically mapped on the project site. Since the LCP was certified, however, the site has been identified as supporting several sensitive native dune species. According to the project's Habitat Protection Plan (HPP) prepared by Zander and Associates:

> …previous [habitat] studies characterized the habitat on the Monterey Bay Shores property as highly disturbed, consisting of areas of bare sand or non-native iceplant, and generally devoid of any native plant communities. However, despite its degraded condition, portions of the site have been documented to support the Smith's blue butterfly, western snowy plover and Monterey spineflower. Surveys for the California black legless lizard, Monterey ceanothus and sandmat manzanita yielded negative results. (Page 4)

The HPP states that the site also has the potential to support additional rare native animal and plant species of the Monterey Dunes. These include the Black legless lizard, the California Burrowing Owl, the globose dune beetle, Sand gilia, Sandmat manzanita, Monterey ceanothus, and Coast wallflower. Therefore, the MBS site, in addition to being an environmentally sensitive habitat area by virtue of its importance as a piece of the larger Monterey Bay Flandrian dune system, is also existing and potential habitat for particular sensitive species**.** In short, there is no doubt that the MBS site is an "area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which easily could be disturbed or degraded by human activities and developments." The following discussion considers some of these habitats in greater detail, and summarizes the potential for restoration.

***Snowy Plover*.** One of the most important habitat values provided by the site is the nesting area it provides for the federally threatened Western snowy plover. The site is included within the "critical habitat area" for this species proposed by the U.S. Fish and Wildlife Service, which extends from Seaside through Sand City and the former Ft. Ord to Marina. It is known to be one of the most important nesting areas within the region. As stated by the HPP:

> Since the site lies at the northern end of a distinct segment (Monterey North as per the classification system used by PRBO [Point Reyes Bird Observatory]) of plover breeding habitat (the beaches of former Fort Ord provide limited habitat because they

> are so narrow) that has limited human access, it has provided somewhat of a refuge to nesting plovers in the past. (Page 13)

Plover use of the site is further documented by the HPP as follows:

> Over a five year period (between 1989 and 1994), the Point Reyes Bird Observatory recorded 15 nests of the western snowy plover on the Monterey Bay Shores property along the shoreline and in the interior near the sand pit (Plate 2 [attached as Exhibit 12]). In 1996, an adult male was observed with two separate broods, each with one chick, along the beach below the sand pit (Page 1997). In 1997, one active nest was observed on the beach at the border of the property with former Fort Ord. One brood also used the site during the 1997 season. The beaches on the property continue to provide suitable nesting and brooding habitat for the plover as does the relatively flat inland plateau north of the sand pit … . (Page 6-7)

According to the applicant's biologist, the Point Reyes Bird Observatory did not observe any Snowy Plover nests on the project site in 1998. Nevertheless, given the documented use of the site by snowy plovers in previous years, and the significance of this habitat area described on page 15 of the HPP, the absence of a nest in 1998 should not be construed as meaning that the site does not provide important nesting habitat. Indeed, comments from staff of the Point Reyes Bird Observatory submitted in response to the Draft EIR underscores the importance of this site as nesting habitat for the Western snowy plover.

While no nests were observed on the site again in 1999, a nest was established approximately one-tenth of a mile north of the project site on the former Fort Ord. According to staff of the USFWS, the chicks that fledged from this nest were brooded in dune areas that included the Monterey Bay Shores Site.

The importance of the project site as Western snowy plover nesting was again confirmed during the summer of 2000; two chicks fledged from a nest located on the site. According to the staff of the USFWS, 2000 was the best year on record for fledgling success throughout the Monterey Bay region, with an estimate of 157 successful fledglings. It is expected that this will translate to a higher demand for safe nesting sites in the summer of 2001.[7]

***Smith's Blue Butterfly.*** With respect to the federally endangered Smith's blue butterfly, the site provides habitat for this species within its northeast corner, and along the swale at the northern border with the former Fort Ord. The butterfly habitat is directly related to the existence of approximately 58 Coast buckwheat plants in this area. Seventy-eight additional buckwheat plants are found immediately adjacent to the northeast corner of project site, in the Southern (now Union) Pacific Railroad right-of-way. Another 14 buckwheat plants are located on a parcel (APN 11-501-004) owned by the applicant on the northern boundary of the project site, in the southeast corner of the former Fort Ord. The HPP assumes, based on previous butterfly surveys, that the 58 buckwheat plants on the project site

[7] Personal communication with David Pereksta of USFWS, November 13, 2000

"provide habitat for a minimal number (4-11) of Smith's blue butterfly and probably serve as habitat [for butterflies] that are dispersing from larger established populations to the north" (page 11).

***Monterey Spineflower.*** The federally threatened Monterey spineflower was first identified on the project site during site surveys conducted in 1997 by the project biologist. According to the HPP, "the number of spineflower plants on the project site is not extensive. There are approximately 2.5 acres of low density Monterey spineflower habitat and 0.3 acre of high density habitat in the southeastern and eastern portion of the project site" (page 14). Nonetheless, the recent colonization of the site by the Monterey spineflower is an example how previously disturbed dune areas provide significant habitat values.

***Restoration potential and evidence of natural recovery.*** The majority of the site, including the beach area, is bare sand. Beside providing nesting habitat for the Western snowy plover, bare sand areas represent restorable dune habitat areas that are important to the long-term survival of the rare plant and animal species unique to the Monterey Dune ecosystem. Similarly, the approximately 1.9 acres of the site that is currently dominated by non-native iceplant, also represents restorable dune habitat. Removal of the iceplant, which can occur naturally (via heavy frost or disease) or with human intervention, would enhance the native dune habitat currently provided by the site, and assist in the recovery of this resource throughout the dune system. Recovery and expansion of native dune habitats on the project site is facilitated by the absence of European beach grass, a non-native invasive species that has degraded native habitats elsewhere in the Monterey Bay Dunes.

Because native dune plants are superbly adapted to life in an environment subject to periodic disturbance, natural recovery would be expected following removal of disruptive activity. In fact, much of the biological information collected for the site indicates that native dune plants and habitats are naturally recurring in areas that were previously disturbed by sand mining activities. The Habitat Protection Plan states that native dune plants considered to be "pioneers" in natural succession, including the federally endangered Monterey spineflower, extend from the northern slopes of the abandoned sand pit to the swale on the northern boundary of the project site, encompassing approximately 9.2 acres (page 5).

Other biological data indicating that the site is naturally returning to a native dune habitat includes the apparent expansion of the numbers of buckwheat plants found on the site. According to the HPP, Dr. Richard Arnold reported observing approximately 40 individuals of Seacliff buckwheat on the site in 1987 (page 10); the project biologist identified 58 plants in 1995. A reconnaissance survey in 1997 confirmed that the extent and distribution of buckwheat on the site is essentially the same as recorded in 1995.

In referencing Dr. Arnold's studies, the HPP states that "in July, August and September, 1987 [Dr. Arnold] reported finding four adults and two larvae of the Smith's blue butterfly along the northern border and neat the northeastern corner of the property. Because he found such a small number of adults, and only found them on two of his six visits to the site, Dr. Arnold assumed the site was not heavily used by the Smith's blue butterfly and concluded that it probably provided habitat for transients that were dispersing from larger established populations to the north." (Page 11) One

implication of this statement could be that the small population of Smith's blue butterfly on the site has migrated from a more established population to the north, and are pioneers attempting to establish a larger permanent population on the Monterey Bay Shores site. The removal of the existing habitat and "transient" butterfly population could significantly set back this process.

It is also worthwhile to note that the HPP states that "During July-August, 1988, LSA Associates observed a total of about 12 individuals on six separate occasions scattered in the vicinity of the northeastern property boundary." (Page 11). The HPP, however, estimates the site's butterfly population to be only 4 – 11 individuals, and discounts the removal of the habitat area as insignificant on the basis of the small population and that it is likely a transient population (HPP, page 11).

***Summary of environmentally sensitive habitat values.*** In summary, although the contours of the project area have been substantially altered by past sand mining activities, the site currently supports rare and important native dune habitats. This includes the significant extent of bare sand habitat, which provide nesting areas for the federally threatened Western snowy plover. Bare sand areas will also support the natural and human induced recurrence of rare native plant and animal species, as will areas of the site where habitat values have been diminished by the presence of non-native species. Given the rarity, sensitivity, and historic decline of the dune habitats native to the Monterey Bay dunes, successful recovery of this habitat is dependent upon the protection and biological enhancement of existing and disturbed yet restorable dune areas alike.

***b. The Project Does Not Protect Environmentally Sensitive Dune Habitat***

Having established that the MBS site qualifies as ESHA under the certified LCP, the Commission must find that the development proposed for the site "protects" this ESHA (LCP Policies 3.3.1; 4.3.21), and that any development is designed and sited to prevent impacts that significantly degrade or threaten the continuance of surrounding ESHA (4.3.20). Overall, any approved development density must be limited sufficiently to address the Monterey Bay dune habitat (LCP 6.4.1).

As approved the City of Sand City, the project is not consistent with these LCP policies. First, the overall direct impacts of the project on environmental sensitive habitat are substantial. As stated on pages 76-77 of the Draft EIR for the project:

> The direct biological resources impacts as a result of this project would be the loss or disturbance of 30.7 acres of habitat through site grading and project construction activities…. The removal of these habitats will result in the loss of plants, and may result in the loss of wildlife.
>
> A portion of the vegetation to be removed includes the Monterey spineflower, a threatened species under the Federal Endangered Species Act. In addition, removal of sea cliff buckwheat plants will reduce habitat for the Smith's blue butterfly, a species designated as a federal endangered species. Grading of the bare sand areas used in the past for nesting by the snowy plover, a species with a threatened status under the federal Endangered Species Act, will reduce available nesting habitat. The direct

> impacts on these three species are expected to be temporary since the project includes a plan to restore a portion of the site that would be maintained in its natural state in perpetuity, with a deed restriction.
>
> The project would facilitate increased public access on the project site, as well as on the adjacent beaches and parklands. Indirect and cumulative impacts could result from the increased human traffic on the beach and strand areas that could disturb the nesting western snowy plovers and reduce nesting habitat value on the site and in adjacent areas for this species.

In addition to the impacts described above, the project will adversely affect environmentally sensitive habitats by introducing significant amounts of noise, glare, and human activity, and by permanently removing 13 acres of currently open dune habitat from the Monterey Bay dune system.

The proposed methods of minimizing and mitigating these impacts are detailed in the HPP, the Final EIR, and the City's conditions of approval. In summary, 10.2 acres of 32 acres of the project site above the mean high tide line will be placed in conservation easements and protected and restored as dune habitat. The remaining 8.8 acres outside of the 13 acre development footprint will be public access easement areas; the HPP includes measures to revegetate and manage these areas as well, consistent with the public access improvements to be installed by the project. The specific provisions of the HPP are intended to minimize the impacts of project construction on existing sensitive habitats and species, and to facilitate the enhancement of native dune habitat values on the 19 acres of the site outside of the development footprint. Particular emphasis is placed on establishment of habitat that will benefit the rare plants and animals of the Monterey Dune system. No specific mitigation is proposed for the net loss of 13 acres of dune habitat, other than the on-site restoration and habitat management proposed on the remainder of the site.

In addition to the overall loss of sensitive dune habitat, specific impacts to species protected under the Federal Endangered Species Act both on and adjacent to the project site - the Western Snowy Plover and the Smith's Blue Butterfly - are significant and not adequately addressed.

**Impacts to the Snowy Plover**.
Project impacts on the federally threatened Western snowy plover are described in the Final EIR as follows:

> On-Site: The Monterey Bay Shores project will affect western snowy plover nesting habitat on the site and may result in "take" of snowy plovers. Construction of the project will displace documented nest locations. Construction-related activity and noise on the property could discourage plovers from using the remainder of the site for the duration of construction. Although reestablished plover nesting habitat is proposed as part of the project, the extent of available plover habitat on the site following construction may be less than that existing today. Furthermore, the proximity of a new hotel/resort complex and increased access to and visitor use of the beach and strand area could limit or preclude future plover use of the property.

Off-site: The project has the potential to increase off-site impacts to the population of plovers using the Sand City shoreline. A destination resort and public access at a new location on the shoreline will introduce a new point source of human use into the shoreline environment. Increased, unrestricted use of the shoreline by people and pets resulting from the MBSR project could affect plovers at nesting, brood-rearing and foraging sites throughout Sand City. Finally, the cumulative effects of the MBSR project on western snowy plovers in combination with other planned or proposed shoreline projects in Sand City, are potentially significant.

To reduce project impacts on the western snowy plover, the City has required that:

- the applicant obtain a 10(a)(1)(B) permit from the U.S. Fish and Wildlife Service prior to the issuance of the Coastal Development Permit for the project;

- a qualified biologist be on-site to monitor for and protect snowy plovers during construction. Construction may not commence during the nesting season unless the biologist confirms that there has been no plover activity on site for two months prior to construction. If plovers are observed in areas that could be affected by the project, construction may not begin until September/October after all snowy plover chicks in the project vicinity have fledged and are flocking in preparation for winter migration;

- the project fund one permanent, full-time equivalent biological steward/ranger to monitor the project site for compliance with the access management plan and to regulate the times, locations and other conditions under which the beach users are allowed access to the beach and other sensitive areas;

- the applicant participate in the development of a City-wide (coastal zone) HCP/management strategy and a program to establish and protect suitable permanent habitat for western snowy plover in the vicinity of the Sand City shoreline acceptable to the U.S. Fish and Wildlife Service.

To further protect western snowy plovers and their habitat, the City has committed in the final EIR to the adoption and implementation of the following ordinances and implementation programs (pgs 8-9):

- Prohibition of unauthorized vehicles, dogs and horses on City beaches;

- Prohibition with interfering with any fencing installed to protect western snowy plover pursuant to the Habitat Conservation Plan; and,

- Establishment of two-full time equivalent biological steward ranger positions (one of which will be funded by the project, as noted above) to monitor and protect plover habitat areas.

The Western snowy plover habitat protection and restoration objectives included and required as part of the project do not ensure the effective protection, or the biological continuance, of the Western snowy plover habitats within and adjacent to the project. First, the project will displace and significantly alter documented nesting locations. As noted on page 8 of the HPP, while snowy plovers do not establish permanent nests that remain from year to year, they do exhibit high nest fidelity. Snowy plovers return to nest in specific locations because they have particular nesting needs. While the project intends to establish new nesting area, it can not be guaranteed that, following the significant landform alterations proposed as part of the project and the increase in noise, glare, proximity to structures, and human activity, that the site will continue to provide viable habitat for this species.

Second, impacts associated with an increase in human use of Western snowy plover habitat areas on and adjacent to the site are proposed to be controlled by two biological stewards. However, the ability of these stewards to effectively manage plover habitat consistent with the significant increase in human use of the area remains questionable. It is unclear how the presence of biological stewards will mitigate for the impact of the development itself, particularly given its scale and intensity. Even with the stewards, the glare, noise, physical presence, and increased human presence will remain. In response to previous Commission staff concerns regarding this issue, the Final EIR concludes, on page 23, "…noise, light, glare, proximity to structures and human activity and other indirect effects on plover nesting habitat may limit the plovers' ability to establish nests on this site regardless of the steward's efforts". Moreover, without a more considered assessment of the habitat values of the site, such as would be provided through the U.S. Fish and Wildlife Habitat Conservation Planning (HCP) process, it is difficult to know whether the proposed mitigation strategy is adequate (see below).

Finally, the project's proposed future reliance on the Endangered Species Act Habitat Conservation Planning consultation process to resolve outstanding issues related to the projects direct and cumulative impacts on the Western snowy plover does not adequately ensure consistency with LCP habitat protection requirements. The HCP process is one of the primary mechanisms used by the U.S. Fish and Wildlife Service to address the appropriate levels of development, consistent with the Endangered Species Act prohibition on the "take" of a listed species, such as the Plover. To approve an HCP, the USFWS must find, among other things, that any take of species related to a development is incidental and the taking will not appreciably reduce the likelihood of survival and recovery of they species in the wild.

In this case, a systematic and comprehensive assessment of endangered species habitat that may be affected by the project, such as might be developed through the Endangered Species Act consultation process, is needed to assess LCP consistency. The information generated through this process must be thoroughly considered by the Commission to effectively address the impacts of the project on Environmentally Sensitive Habitat Areas. Indeed, a project can not be found to be consistent with the sensitive habitat protection requirements of the LCP until it has been demonstrated that it will not jeopardize the biological continuance and recovery of threatened and endangered species. Moreover, a failure to consider the biological information generated through the HCP process as part of the Coastal Development Permit review would preclude consideration of alternative project designs and intensities that may be necessary to meet the habitat protection requirements of both the LCP and the Endangered Species Act.

In March 1999, the applicant developed a Habitat Conservation Plan and Implementation Agreement specific to the proposed project for submittal to USFWS. At about the same time, the City initiated the development of a Habitat Conservation Plan (HCP) for the entire coastal area of the City west of Highway One. The purpose of the City plan was to address the habitat protection needs of the various special status species that exist within the Sand City portion of the Monterey Dunes, particularly the Western snowy plover, in light of the various developments planned for the area (including the subject project). In terms of providing a more thorough and comprehensive approach towards addressing the sub-regional habitat issues raised by the future development of this section of the Monterey Dunes, the

City-wide HCP, rather than the project specific HCP, was clearly the preferred approach of the City[8], the USFWS, and the Commission staff.

As reported to the Commission in May 1999, the City-wide HCP was expected to be completed in the late summer/early fall of 1999, and provide critically important information regarding the protection of environmentally sensitive habitats, especially with respect to the survival and recovery of threatened and endangered species. It was also reported that the applicant's project specific HCP would be processed concurrently with the City's submittal to ensure that the inter-property and cumulative habitat issues would be effectively addressed.

On September 30, 1999, the USFWS responded to the City's draft HCP, and expressed its opinion that the Plan would not meet the criteria for the issuance of a section 10(a)(1)(B) permit under the Endangered Species Act (this letter is attached as Exhibit 19). Although not specifically stated by the letter, the same held true for the project specific HCP, which proposed a very similar approach to habitat protection and mitigation as the City-wide HCP. This was communicated to the applicant's biological representatives by the USFWS staff, and, in response, the project biologists indicated their intention to resubmit a revised HCP that responded to USFWS concerns.[9] While the October 5, 2000 letter from the applicant's attorney (Exhibit 1) indicates that the revised project specific HCP would be submitted to Coastal Commission and USFWS staff "within the next three weeks", neither USFWS nor Commission staff have received this submittal as of the writing of this staff report.

On February 10, 2000 the City wrote the USFWS and indicated that it was temporarily abandoning the City-wide HCP effort. This letter, attached as Exhibit 18, also requested that USFWS proceed with a review of an independent HCP for the Monterey Bay Shores project. However, as noted above, a revised project specific HCP has yet to be submitted to the USFWS or to the Commission staff. Nor has any comparable habitat information been submitted to the Commission. Thus, the Commission continues to lack the detailed information needed to address the projects impacts of rare and sensitive species, and therefore can not find the project to be consistent with LCP habitat protection requirements.

**Impacts to Smith's Blue Butterfly**.
All 58 of the seacliff buckwheat plants on the site will be removed as a result of the project. As previously noted, the HPP estimates that these plants provide habitat for between 4-11 individuals of Smith's blue butterfly. The removal of this habitat is primarily associated with the proposed recontouring of the site; a new dune formation, intended to provide restored habitat and to hide the development from the view of motorists traveling along Highway One, will be created in the northeast corner of the site. The removal of the existing buckwheat plants triggers the need for a Section 10 consultation with the U.S. Fish and Wildlife Service pursuant to the federal Endangered Species Act, based on the fact that these plants are known to support, and provide habitat, for the federally endangered Smith's blue butterfly. As noted above, this consultation has yet to be initiated.

[8] As stated on page 23 of the Final EIR, "Sand City is committed to a City-wide approach to preservation and management of Western snowy plover habitat".
[9] Personal communication with David Pereksta of USFWS, Nov 13, 2000

In order to minimize impacts on the Smith's blue butterfly, the flowerheads and stems of all buckwheat plants within the construction area, as well as the sand/duff surrounding the plants, will be relocated to an adjacent parcel northeast of the project site that is outside of the project area. This site, which is owned by the applicant and currently contains approximately 14 buckwheat plants, is intended to provide interim habitat for the Smith's blue butterfly during construction. Following construction, 1000 propagules of seacliff buckwheat will be planted on each acre of leeward slopes in the dune management area, for a total of approximately 3,900 plants.

While restoration efforts in other areas of the Monterey Dunes have demonstrated that the revegetation of dunes with buckwheat can be accomplished, it remains unclear whether these plants will provide productive habitat for the Smith's blue butterfly. Of primary concern is that removal of the existing habitat, and the associated impacts to the existing population of the butterfly, will set back or preclude whatever gains have been made in the butterfly's effort to colonize this site.

One option that could prevent this impact would be to avoid impacts to the existing butterfly habitat on the project site altogether. This alternative, however, may reduce opportunities to enhance butterfly habitat on the site through the proposed dune creation, which create dune areas that are more protected from the predominant northwest winds, and therefore favored by the butterfly.

Clearly, careful coordination with the biological consultations required under the Endangered Species Act is needed to help resolve this issue. The biological analyses that will accompany this consultation is essential to determine the full extent of the project's impacts on this federally endangered species, and thus, whether the project complies with the LCP Policies that require new development to protect environmentally sensitive habitat areas and ensure their biological continuance.

3. Conclusion

There are numerous outstanding issues that preclude a finding that the project conforms to LCP standards protecting environmentally sensitive habitats, summarized below.

First and foremost, effective protection of habitat for the western snowy plover and the Smith's blue butterfly is dependent upon future consultations with the U.S. Fish and Wildlife Service pursuant to the Endangered Species Act. Without the detailed biological analyses that will be generated through these consultations, it is impossible to conclude that the current project is consistent with LCP habitat protection requirements. Because significant changes to the project approved by the City may be necessitated by these consultations, it is inappropriate to require that the consultations be completed as a condition of project approval. Rather, the Commission must deny the current MBS project because it is unable to find that the project is consistent with ESHA protection policies of the LCP.

Second, the project will result in a permanent net loss of over 13 acres of environmentally sensitive dune habitat areas (page 160 of the Final EIR). The cumulative loss of dune habitat areas on the site, combined with project impacts on remaining habitat areas (see third point, below), has the potential to jeopardize the continuance of the site's sensitive biological resources. No specific mitigation beyond

the proposed restoration and management of the remaining 19 acres on the site has been proposed for this net habitat loss.

Third, the habitat value and biological productivity of the proposed on-site habitat restoration and management areas, and the ability of the biological stewards/rangers to effectively protect these areas, has not been adequately established. Noise, light, glare, proximity to structures and human activity, fragmentation of habitat, and other aspects of the development pose significant risks to environmentally sensitive habitats on and adjacent to the project site, and are outside of the control of a biological steward.

Fourth, contrary to LCP Policy 4.3.21.b (restrict land disturbance and the removal of indigenous plants to the minimum amount necessary for structural improvements), the project involves over 30 acres of grading, excavation, and land form alterations, which will remove almost all of the existing habitat areas on the site. Alternative types or intensities of structural improvements which would minimize land disturbance appear feasible, but would require substantial redesign of the project.

The remedies available to the applicant to resolve these issues involve coordinating the required Endangered Species Act consultations with a redesign of the project that minimizes the extent of land disturbance and associated impacts to dune habitats, and provides mitigation for unavoidable impacts that are necessary to ensure the biological continuance of the environmentally sensitive habitat areas on and adjacent to the project site.

F. Water Supply

1. LCP Requirements

LCP Policy 4.3.31 states:

> Require future developments which utilize private wells for water supply to complete adequate water analyses in order to prevent impacts on Cal-Am wells in the Seaside Aquifer. These analyses will be subject to the review and approval of the Monterey Peninsula Water Management District. In support of MPWMD's review and permit authority, the City should incorporate these requirements into City development review.

LCP Policy 6.4.11 requires:

> New development shall be approved only where water and sewer services are available and adequate; and where adequate circulation and parking has been provided for.

2. Project Analysis

Water to meet the project's domestic, landscaping, and fire suppression needs is proposed to be obtained from an existing on-site well and supplemental second well that will be drilled on the project

site. Because the project site is outside the service area of the Cal-Am water company, an independent mutual water company will be formed to supply water to the project. According to the October 5, 2000 letter from the applicant's attorney, the applicant and Cal-Am have a pending Agreement for operation of the project's water system, which would be completely independent from the main Cal-Am system that currently supplies domestic water to most of the Monterey Peninsula.

As estimated by the project's engineers, 94 acre-feet of water will be required to serve the originally proposed 597-unit project on an annual basis (assuming 80% occupancy of the hotel). However, as noted in their comments on the Draft EIR, the Monterey Peninsula Water Management District (MPWMD) estimated the originally proposed project to have a water demand of approximately 125 acre-feet per year. The 495-unit development approved by the City is estimated to require 109.4 acre-feet per year.[10]

The groundwater extracted to serve the project will be from the Seaside aquifer, which is a managed groundwater basin. The Monterey Peninsula Water Management District (MPWMD) regulates extractions from this basin, and a Water Distribution Permit from the MPWMD is required for the project. This permit was denied by MPWMD on October 26, 2000.

The intent of LCP Policies 4.3.31 and 6.4.11 is to ensure that, prior to approving new development, it can be demonstrated that there is adequate water to serve the development. In particular, Policy 4.3.31 establishes a requirement to protect other wells in the groundwater basin. Towards this end, the LCP specifically calls for a comprehensive water analysis to be reviewed and approved by MPWMD, the regulatory body in charge of managing the basin, and requires this review to be incorporated within the City's development review process. In order to issue a distribution permit, the MPWMD must find, among other things, that the project will not create or increase an overdraft of the basin aquifer or adversely affect the ability of existing systems to provide water to users.

Rather than completing the necessary water review prior to the approval of the development, the City conditioned the issuance of the permit as follows:

> Prior to the recordation of the final tract map, and issuance of the Coastal Development Permit, the developer's right to use water from on-site wells for domestic service (potable water), capable of serving the requirements of the project shall be confirmed in writing by the Monterey Peninsula Water Management District, or by court order. This confirmation shall also contain verification of acceptable technical, financial and management capabilities of a mutual water company, unless the mutual water company is to be managed and operated by Cal Am or another appropriate entity acceptable to the City Engineer. Also, a water distribution permit shall also be required from the Monterey Peninsula Water Management District prior to the recordation of the final map.

[10] MPWMD Staff Report for October 26, 2000 Public Hearing in Monterey Bay Shores Water Distribution System (Item VI B), as obtained from the MPWMD internet site on October 30, 2000

This condition conflicts with the specific requirements of LCP Policy 4.3.31 in that the necessary water reviews will take place after the City's development review has been completed. Moreover, it is inconsistent with LCP Policy 6.4.11, which requires demonstration of adequate water prior to the approval of new development.

The purpose of resolving the question of water supply prior to the approval of a development permit makes clear sense not only procedurally, but also in the context of the areas well known water constraints. Existing data regarding the Seaside aquifer does not support an assumption that there is adequate water to serve the project, or that the project's water use will not have an adverse affect on existing wells in the basin. Although MPRPD has not officially declared the Seaside basin to be in an overdraft condition, existing evidence regarding the basin may support such a declaration in the near future[11].

As stated on page 155 of the Final EIR:

> Groundwater pumping now exceeds the safe yield [of the Seaside aquifer], which … has been in overdraft since Cal-Am started pumping the Paralta Well in 1995. The pumping levels are below sea level as demonstrated by the negative elevations reported in the Fugro Phase III Report. In 1995 groundwater pumping of 4,701 acre-feet exceeded the safe yield by 383 acre-feet. The same occurred in 1997 with 4,496 acre-feet pumped which exceeded the safe yield by 121 acre-feet. During those three years, the Cal-Am Paralta Well was pumped for 1,656 acre-feet in 1995, 1,974 acre-feet and 1,335 acre-feet in 1996 and 1997. The safe yield was exceeded by 7.5% in 1995, 8.8% in 1996, and 2.8% in 1997. It is noted that pumping from the Paralta Well was reduced by 639 acre-feet from 1996 to 1997. This also resulted in reducing basin overdraft. Unless pumping of the Paralta well is further reduced, there will be a continuing basin overdraft of the Seaside aquifer which will exacerbate the potential for seawater intrusion.

[11] Ibid

Page 157 of the Final EIR states:

> Use of the on-site PCA well will further exacerbate overdraft of the Seaside aquifer by an additional 125 acre-feet and bring the combined pumping of the Seaside aquifer to over 5,000 acre-feet as compared with the estimated safe yield of 4,375 acre-feet for an overdraft in excess of 625 acre feet.

The Final EIR continues, on page 158

> … the Seaside aquifer could be in overdraft by an excess of 500 acre-feet depending upon the amount pumped from the project's well(s) and the pumping by Cal-Am and the other users of the groundwater basin. Most, if not all, wells in the groundwater basin are pumping from below sea level thus reversing the direction of groundwater flow from offshore toward the onshore wells. This results in a significant impact on the Seaside Aquifer and the groundwater resources.

In recognition of these impacts, the Final EIR proposes, on page 158, the following mitigation measure

> Prior to the recordation of the final map for the project and the issuance of the CDP (in order to be consistent with LCP Policy 4.3.31) the MPWMD shall verify through its Water Distribution Permit review process, to the satisfaction of the City that either (1) groundwater pumping needed for the project (at City-approved or Coastal Commission modified level, should that occur) shall not exceed present groundwater basin extractions by causing a commensurate amount of water pumping reduction; or (2) basin management and production enhancement techniques have been implemented which increase the safe yield of the Basin in an amount sufficient to satisfy the demand from this project.

The above information regarding the project's water supply and it relationship to the Seaside aquifer provides evidence that the availability and adequacy of the proposed water supply remains in question.

Moreover, the mitigation measure suggested on page 158 of the Final EIR indicates that the project's proposed water withdrawals may necessitate a commensurate reduction in water extractions within the basin. Such reductions could have significant impacts on existing water users within the basin, and/or on coastal resources within the Carmel River watershed, which have yet to be identified. This is due to the fact that the primary user of water in the Seaside basin is the Cal-Am water company, which provides water to its users through groundwater extractions and diversions from the Carmel River via the Los Padres Dam. Both of these sources are currently being utilized near or above their sustainable yield. In addition to the overdrafted condition of the Seaside groundwater basin documented by the EIR, this is evidenced by actions taken by the State Water Resources Control Board (SWRCB) that require a reduction in the amount of water being taken from the Carmel River by Cal-Am.

Thus, the proposed extraction of 109 acre feet per year from the groundwater basin would likely require that existing users within the basin would have to reduce their use of water by an equivalent amount, or obtain an additional 109 acre feet per year from the Carmel River. These impacts contradict LCP Policy 4.3.11 requiring future development to prevent impacts on Cal-Am wells, and LCP Policy 6.4.11 which allows for the approval of new development only where there are available and adequate water supplies.

In light of these and other concerns, the water Distribution Permit required for the project was denied by MPWMD on October 26, 2000.

3. Conclusion

Based on current information regarding the status of the Seaside aquifer, and the recent action by MPWMD denying the Water Distribution Permit for the project, there does not appear to be adequate groundwater resources available to serve the project. In addition, the proposed groundwater extractions have the potential to adversely affect other water users with the Seaside basin. As a result, the project is inconsistent with LCP Policies 4.3.31 and 6.4.11 and must be denied.

G. Visual Resources

1. LCP Requirements

LCP Policy 5.3.1 requires:

> Views of Sand City's coastal zone shall be enhanced and protected through regulation of siting, design, and landscaping of all new development in the coastal zone, adjacent to Highway One (on both the east and west) in order to minimize the loss of visual resources.

LCP Policy 5.3.2 states, in relevant part:

> Views of Sand City's coastal zone, Monterey Bay and Monterey Peninsula shall be protected through provision of view corridors, vista points, development height limits, and dune restoration areas, as shown on Figure 9 [attached as Exhibit 8]. Major designated view corridors are:
>
> a) southbound view corridor across the northern city boundary consistent with the public recreation designation …

LCP Policy 5.3.4.a provides:

a. Encourage project design that is compatible to its natural surroundings and that enhances the overall City image. All buildings should be designed and scaled to the community character as established by new development.

LCP Policy 5.3.3.a defines view corridors as follows:

> "views across" [e.g., as provided in LCP Policy 5.3.2, above] shall be protected by retaining the view corridor free of new structures. These corridors will continue to provide broad unobstructed views of the sand dunes, shoreline, Monterey Bay, and the Monterey Peninsula (southbound) or Santa Cruz Mountains (northbound);

LCP Policy 5.3.4.f states:

> Encourage the use of existing natural and manmade dunes as earth berms for visual and noise barriers, as well as buffers between land uses. Landforms are more efficient for visual and noise reduction than planting screens.

Similarly, LCP Policy 5.3.10 requires:

> Utilize existing or manmade dunes within project design to enhance visual resources.

LCP Policy 6.4.5 establishes the following applicable height restrictions:

> In the Sand City Coastal Zone, permit a height limit of 36 feet as measured from existing grade with the following exceptions:
>
> … c) hotel uses shall not exceed 45 feet. …

The above height restrictions are further specified by Implementing Ordinances particular to specific land uses/zoning districts, as follows:

> Coastal Zone Residential, Medium Density
> … No building shall exceed thirty-six (36) feet as measured from the existing grade. …
>
> Coastal Zone Visitor Serving Commercial
> … No building shall exceed thirty-six (36) feet as measured from the existing grade except hotel uses shall be permitted variation in height to forty-five (45) feet. …

Coastal Zone Visitor Serving Residential, Medium Density
… No building shall exceed thirty-six feet as measured from the existing grade. …

2. Project Analysis

The LCP requirements cited above provide general guidance regarding the protection of visual resources in the Sand City coastal zone, and establish specific regulations to achieve such protection.

In terms of general requirements, the LCP calls for the protection of views within the Sand City coastal zone, and encourages project designs that are compatible to their natural surroundings. The LCP further directs that all buildings should be designed and scaled to the community character as established by new development.

More specifically, the LCP establishes particular height limits, view corridors, and design requirements intended to protect visual resources. These development standards include: a prohibition against the installation of new structures in the southbound view corridor across the northern city boundary consistent with the public recreation designation; a height limit of 36 feet above existing grade (45 feet for hotels); and, the requirement to utilize dunes as visual barriers.

As approved by the City, the proposed development is significantly inconsistent with both the general and specific LCP requirements identified above, for the following reasons.

1) The development will be visible to motorists traveling along Highway One (please see visual analysis provided by applicant, attached as Exhibit 10), in an area currently void of structures. It may also encroach upon the southbound view corridor that is required to remain free of structures by LCP Policies 5.3.2.a and 5.3.3.a. However slight the obstruction to coastal views from Highway One may be, this impact is significant in that it changes the viewers perception of the area from a natural dune environment to a built environment, and detracts from the spectacular views of the Monterey Peninsula and Monterey Bay currently available across this undeveloped natural foreground. The importance of preserving such views free of structural obstruction has been a significant factor in the Commission review of prior development proposals in the Sand City coastal zone. For example, in its approval of Coastal Development Permit No. A-3-SNC-94-08 for the Sterling Center (a 136 unit resort that has not been constructed), the Commission required that all structures within the LCP view corridor be limited to a maximum height of 50 feet above mean sea level, the lowest elevation of Highway One as it crosses the Sterling Center site.

2) The project will severely impact views of the Sand City coastal zone available to beach goers and boaters, altering it from an open space dune environment to an intensely developed complex of urban uses. As shown in the visual analysis of the project's impact on views from the beach and bluff (Exhibit 11), the open space dune environment will be replaced by massive structures that will drastically change the character of the currently natural surroundings.

3) The scale of the development is clearly inconsistent with Sand City's community character, particularly in the area seaward of Highway One. The only structure currently in existence in this area is a one-story sewage pump station approximately three fourths of a mile south of the subject project. As noted above, the previously approved 136 unit Sterling Center, the only other structure approved to be developed in the area, was limited to a maximum height of 50 feet above mean sea level, and did not exceed 4 stories[12]. In comparison, the height of this 495-unit project approved by the City will range from approximately 90 feet to 100 feet above mean sea level, and be 4-7 stories tall.

4) The project sets a precedent for new development that will cumulatively have significant adverse impacts on the visual resources of the Sand City Coastal Zone. Based on the LCP directive that new development should be "designed and scaled to the community character as established by new development" (LCP Policy 5.3.4.a), the project would establish a basis under which similarly massive structures could be developed on other dune parcels. These include the coastal zone area currently owned by the City Redevelopment Agency and planned for development, as well as the Sterling site, should a new project be proposed in this area.

5) The project exceeds the maximum building heights established by the LCP. Development in the Sand City coastal zone is limited to a maximum height of 36 feet above existing grade, except for hotels, which are limited to 45 feet above existing grade. The subject project is inconsistent with this requirement in two ways. First, the 45 foot height limit established for hotels only, has been applied to the Vacation Ownership Resort building, which does not qualify for an exception to the 36 foot height limit. Second, and more significantly, the method used to determine height limits for all project buildings is inconsistent with LCP standards, which are based on a specific height above existing grade. Rather then applying existing grades, project height limits were measured from an artificial grade established by connecting the highest points of landforms on either side of areas that were previously lowered by sand mining operations (please see Exhibit 7). This artificial elevation, referred to as the "mean pit level" by the project EIR, is significantly higher than the site's existing grade; in some areas almost 50 feet higher than the true existing grade (i.e., in the location of the proposed hotel). Thus, actual project heights are significantly taller than the 36 and 45 foot height limit above existing grade established by the LCP.

6) The project is also inconsistent with LCP policies 5.3.4.f and 5.3.10 that encourage the use of existing natural and manmade dunes as visual barriers and buffers between land uses, and that require the use of existing or manmade dunes to enhance visual resources. Approximately 880,000 cubic yards of sand will be removed from the site. Much of this sand will be generated by lowering the dunes on the seaward side of the development from their existing heights of 35 feet to more than 60 feet above mean sea level (MSL), to a

[12] The Coastal Development Permit for this project expired before it was constructed.

> constant elevation of 22 feet above MSL. This will exacerbate the adverse visual impacts of the project when viewed from the beach, and expose areas proposed for habitat restoration to light, noise, and other negative influences of the development, in direct contradiction of these LCP policies.

In response to these issues, the applicant submitted a revised project in April 1999 referred to as the Modified Reduced City Project (MRCP). As reported to the Commission in May 1999, the MRCP included reductions in the proposed building heights that minimized the visual impacts of the City approved project. Nevertheless, there remained significant outstanding issues regarding the MRCP's conformance with LCP visual protection policies (not to mention many other unresolved coastal resource issues). In an attempt to resolve the outstanding visual resource issues relative to the MRCP, the Commission staff requested that applicant provide, among other things, a response to the LCP issues detailed in the May 1999 staff report. The applicant has not provided such a response. Rather, in a letter from the applicant's attorney dated October 5, 2000, the applicant has indicated that the 495-unit project approved by the City has not been revised to request a lower number of units at this time.

4. Conclusion

The project approved by the City is clearly inconsistent with LCP visual resource policies calling for the protection of views within the Sand City coastal zone, encouraging project designs that are compatible to their natural surroundings, and scaling new development so that its is consistent with community character. More specifically, the City approved project does not conform to LCP height limitations, will have significant adverse affects on the scenic and natural qualities of the region, may encroach upon the southbound view corridor required to remain free of structures, and is visually incompatible with the surrounding area. These impacts are exacerbated by the project's removal of over 800,000 cubic yards of sand, in direct violation of LCP directives to utilize dunes to minimize visual impacts. Because of outstanding fundamental conflicts with the visual resource policies of the LCP, the project must be denied.

H. Natural Hazards

1. LCP Requirements

LCP Policy 4.3.8 requires:

> All development shall be sited and designed to minimize risk from geologic, flood or fire hazard.

LCP Policy 4.3.9 states:

> Require preparation of geologic and soils reports for all new developments located in the coastal zone. The report should address existing and potential impacts, including ground shaking from earthquakes, direct fault offset, liquefaction, landslides, slope stability, coastal bluff and beach erosion, and storm wave and tsunami inundation. The report shall identify appropriate hazard setbacks or identify the need for shoreline protective devices to secure long-term protection of Sand City's shoreline, and shall recommend mitigation measures to minimize identified impacts. The reports shall be prepared by qualified individuals in accordance with guidelines of the California Division of Mines and Geology, the California Coastal Commission, and the City of Sand City. Geologic reports shall include the following:
>
> a) setback measurements that are determined from the most inland extent of wave erosion, i.e., blufftop or dune or beach scarp; if no such feature is identifiable, determine setback from the point of maximum expected design storm wave runup;
> b) setbacks based on at least a 50-year economic life for the project;
> c) the California Division of Mines and Geology criteria for reports, as well as the following:
>  1) description of site topography;
>  2) test soil borings and evaluation of suitability of the land for the proposed use;
>  3) evaluation of historic, current and forseeable cliff and beach erosion, utilizing available data;
>  4) discussion of impacts of construction activities on the stability of site and adjacent area;
>  5) analysis of ground and surface water conditions, including any hydrologic changes caused by the development;
>  6) indication of potential erodibility of site and recommended mitigation measures;
>  7) potential effects of seismic impacts resulting from a maximum credible earthquake and recommended building design factors and mitigation measures;
>  8) evaluation of off-site impacts; and
>  9) alternatives (including non-structural) to the project.

LCP Policy 4.3.10 provides, in relevant part:

> Encourage the clustering of developments away from potentially hazardous areas and condition project permits based upon recommendations presented in the geologic report.

LCP Policy 4.3.11 requires:

> No development will be allowed in the tsunami run-up zone, unless adequately mitigated. The tsunami run-up zone and appropriate mitigations, if necessary, will be determined by the required site-specific geologic investigation.

LCP Policy 4.3.12 states:

> Deny a proposed development if it is found that natural hazards cannot be mitigated as recommended in the geologic report, and approve proposed developments only if the project's density reflects consideration of the degree of the on-site hazard, as determined by available geotechnical data.

LCP Policy 4.3.15 provides:

> Require the developer of a parcel in an area of known geologic hazards to record a deed restriction with the County Recorder indicating the hazards on the parcel and the level of geotechnical investigations that have been conducted.

LCP Policy 4.3.16 states:

> Require drainage plans for developments proposed on coastal bluffs that would result in significant runoff which could adversely affect unstable coastal bluffs or slopes.

Page 3 of the Sand City certified Implementation Plan (IP) states, in part:

> The specific contents of a coastal development permit application to be submitted to the City are as follows: …d) Geology and soils report: Prepared according to City standards which are presented in the following Section of this Plan.

The standards referenced on page 3 of the IP are found on pages 13 –15 of the certified Implementation Plan, and are preceded by the following introduction:

> The Land Use Plan stipulates that all development will be sited to minimize risks from geologic, flood, or fire hazards, and this requirement is included in the Zoning Ordinance as a finding for approval of a coastal development permit. To facilitate such a finding all proposed coastal developments will be required to submit geologic and soils reports as part of a coastal development permit application. The purpose of these reports is to address existing and potential impacts and to recommend mitigation measures to eliminate or minimize identified impacts. The reports will be used to determine findings of consistency with the Local Coastal Program and place conditions on the development, if necessary. …

The minimum standards for the preparation of geologic and soils report specified on pages 13 –15 of the IP generally reiterate the requirements established by LCP Policies 4.3.9, 4.3.11, and 4.3.16 cited above.

It is noted, on page 14 of the IP:

> Geologic reports prepared for other projects in the area may be consulted if the material is pertinent to the project proposal and the level of detail in the report is adequate to meet all City requirements.

2. Project Analysis

Coastal erosion is a dynamic and episodic process that poses significant hazards for new development. Combined with storm-wave run-up, tsunamis, sea level rise, and earthquakes, these natural hazards are critically important considerations in the design and location of new development, as reflected by the above LCP policies.

By virtue of its exposure to ocean waves and high winds, and its make-up of unconsolidated sandy soils, the shoreline of the Monterey Dune system is extremely susceptible to such hazards. As cited in the Commission's findings for the U.S. Army's Disposal and Reuse of Fort Ord (the former Army base immediately north of the project site), the Army's consistency determination provides the following information regarding coastal erosion in the project area, and the dangers it poses for development:

> The coastline of Monterey Bay along Fort Ord and adjacent areas is undergoing severe wave erosion. This coastal erosion has been occurring for several thousand years…. However, the erosion rate has accelerated in this century from about 1.5 feet per year to up to an estimated 7.0 feet per year in 1983… Two possible reasons … are sand mining along the coast … and sediment trapping in the reservoirs in the Salinas River Watershed.
>
> The existing Stilwell Hall located near the edge of the dune cliff-face is especially threatened by the rate of coastal erosion. Revetments constructed in the past have had some success in retarding the erosion rate at Stilwell Hall to the extent that the hall is now located on a pronounced peninsula, as the formerly continuos coastline to the north and south has continued its recession unabated. The revetment was last repaired in 1983, but erosion has since continued, particularly on the south side. The exposure of formerly buried storm drain pipes elsewhere along the Fort Ord coast is further evidence of the rate of coastal erosion.

The Stilwell Hall soldiers club, approximately two miles upcoast of the project site, is a good example of the risks to development posed by the natural hazards along this area of the coastline. When it was completed in 1943, it was setback approximately 300 feet from the shoreline. By 1950, the Army had initiated efforts to protect the structure from erosion.

These shoreline hazards, as applied to the project site, are described in more detail below.

**Tsunamis.**
Hazards to the project posed by tsunami's (a seismically induced wave or "tidal wave") on are summarized on pages 42 – 43 of the Draft EIR as follows:

> The project's Pacific Coast location presents the potential for a tidal wave, or tsunami, caused by an earthquake to cause higher than normal shoreline flooding. A distant-source tsunami predicted for a 100-year recurrence interval, could cause a wave 11.5 feet in height or 14.8 feet if the tsunami wave coincided with a once a year storm [citation: 1987 Geoconsultants report]. …The available data indicate that the project site could be inundated up to a level of 26 feet MSL. …

The Update Geotechnical Engineering Report for the project dated October 2000 has this to say about the risks of tsunamis at the project site:

> [Haro Kasunich and Associates'] response letter of October, 1997 to [Sand City Community Development Director] Mr. Steve Matarazzo (attached, Appendix B) presents tsunami runup elevations presented by Warren Thompson in November 1984 for the shoreline of Sand City, for 100 and 500 year events which include major ocean storm runup events. Mr. Thompson concludes that maximum flood elevation from a tsunami will be 11.7 feet, NGVD; and indicates that should a major tsunami occur at the same time as a major ocean storm runup event (a highly unlikely coincidence), the wave runup elevation would increase approximately 3.5 feet. Adding 3.5 feet to the projected design wave runup elevation of 30 feet, NGVD results in an elevation of 33.5 feet, NGVD, lower than the enterance of 35 feet, NGVD for the proposed underground parking structures.

**Shoreline Recession.**
The analysis of shoreline recession on the project site, and its application to building setbacks have been based upon the information contained in the 1989 Moffat & Nichol study[13], and are summarized on page 45-46 of the Draft EIR as follows:

> The [Sand City] shoreline [as defined by the Mean High Water Elevation] is expected to continue to recede in the future, though at a significantly lower rate than the average 7.5 to 8 feet it was estimated to have receeded between the late 1940's and the 1970's.
>
> …The factors affecting erosion rate taken into account in Moffat and Nichol's future shoreline positions were: natural recession, sea level rise, and extreme, short-term

[13] The Moffat and Nichol study, and the methodology it suggests to evaluate shoreline erosion, is not a part of the Sand City certified LCP, and has not been endorsed by the Commission as an official standard or procedure for analyzing Natural Hazards consistent with LCP requirements.

> beach fluctuations. … Under a conservative, or low risk level, the Mean High water could move 75 feet landward by the year 2040 (end of the 50 year projection period).
>
> …Taking into account a safety factor that reflects the uncertainty of the projection, in the 50 year forecasting period, the total average recession for the shoreline of Sand City is to be between 38 and 113 feet. If the temporary effects of winter storm recession are added, the total recession could be between 103 and 178 feet.

As part of the Update Geotechnical Engineering Report recently provided by the applicant, the foreshore, nearshore, and backshore areas of the beach in front of the proposed hotel was resurveyed in August 1999. The profile of the beach and the location of the Mean High Tide line were compared to the survey completed in January 1995. As reported on age 3 of the Update report:

> The results of these two profiles are presented in Figure 2, Appendix A of this report [please see Exhibit 21]. A comparison of the two beach and bluff profiles shows that the mean high water line has virtually remained stationary, indicating that the nearshore, foreshore and backshore of the beach has not eroded landward nor scoured in depth for a 5 year, site specific, measurement period. A comparison of the coastal bluff crest from 1995 to 1999 indicates that the crest has moved landward approximately 5 ½ feet. Some small areas of the escarpment have moved landward 4 feet. The wind blown sand from this escarpment appears to be depositing itself in the open hole according to the profile comparison, which is expected and natural, for the windward and lee slopes of a transverse dune. The two areas of measurable recession in our profile comparison equate to erosion rates of about 1.5 feet per year. Realize that the two measurements were taken before and after a significant El Nino winter storm season (1998) which should maximize coastal erosion. Comparison of this measured erosion rate with the Moffat and Nichol low risk recession rate of 3.5 feet per year indicates that erosion at the site, even with the occurrence of an El Nino winter storm season, is not as rapid as used in design of the setback lines for the proposed buildings. The 1.5 feet per year of erosion since 1995 more closely matches the high risk recession of 102 feet in 50 years presented by Moffat and Nichol (2.0 feet per year).

**Storm Wave Run-Up.**

As noted on page 46 of the Draft EIR, a critical natural hazard consideration in site planning that was not considered in the Moffat and Nichol Study, is storm wave run-up. In addressing this hazard, the Draft EIR states, on page 47, that according to various geotechnical reviews, "29 feet ± 3 feet NGVD [National Geodetic Vertical Datum, generally equivalent to mean sea level] is a reasonable figure for project design purposes". However, as presented on page 17 of Geoconsultants Inc. 1987 Preliminary Geotechnical Study for a previous project proposed on the project site, storm wave run-up could attain elevations of 35 to 48 feet under worst-case conditions. The potential for this to occur is partly acknowledged, but discounted, on page 47 of the Draft EIR as follows:

> Although storm wave run-up of up to 48 feet NGVD could be expected under worst case predictions a couple of miles up the coast at Fort Ord's Stilwell Hall, data for southern Monterey Bay, where the project is located, show that storm waves in the project site vicinity would be smaller due to the tendency for wave heights to diminish south and down-coast of Fort Ord.

Page 8 of the Update Geotechnical Engineering Report states the following regarding storm wave runup:

> Our worst case (El Nino beach scour condition) highest runup calculations for the projected 50 year beach erosion profile, indicate wave runup across the eroded sand beach and up a 2:1 (horizontal to vertical) coastal bluff to elevations ranging from 25 feet to 35 feet above Mean Sea Level (MSL). These site specific results for the projected 50 year erosion line are in line with the estimated storm wave runup elevations of 29 feet ($\pm$) 3 feet presented by GeoConsultants in their August 1987 Preliminary Geotechnical Study. These results also substantiate the design wave runup elevation conclusions by HKA presented in our 12 August 1997 response letter to SNG and David Powers and Associates attached in Appendix B.

To address the shoreline hazards described above, the proposed buildings will be setback between 299 feet and 318 feet from the Mean High Water line. This exceeds the 178 feet 50 year erosion distance assumed to be the worst-case scenario by the 1989 Moffat and Nichol Study, and according to page 49 of the Draft EIR, falls within 75 and 100 year projected coastal shoreline recession distances estimated by this study.

Although the submitted geotechnical evaluations assert that the project has been adequately setback based on a 50-year economic life, the are numerous outstanding issues relative to the project's conformance with the Natural Hazard Policies of the LCP. These include:

**Point from which the setback is measured**: Policy 4.3.9a of the Sand City LCP requires that setback measurements be determined from the most inland extent of wave erosion (i.e., blufftop or dune scarp). If no such feature is identifiable, this policy requires setbacks to be determine from the point of maximum expected design storm wave run-up. The Update Geotechnical Engineering report has used the elevation of the Mean High Tide Line (MHT) as the base point for determining the setback. The Moffatt and Nichol Engineers used the MHT as the shoreline reference location for the evaluation and analysis of shoreline trends that was presented in the City of Sand City Shore Erosion Study. The Shore Erosion Study relied on historic surveys and aerial photographs for tracking shoreline changes and trends and the MHT line is a useful reference for this effort. However, for planning and regulatory purposes, the LCP uses setbacks to insure that development will be save over its economic life and identifies the dune scarp, blufftop or point of maximum design storm wave run-up as that starting point.

The project site, as shown in Figures 2 and 3 of the Update Geotechnical Engineering Report (please see Exhibits 21 and 22), has a broad beach that is approximately 140 feet wide and gently slopes up to

an elevation of approximately 20 feet above Mean Sea Level (MSL). At this point, the beach transitions to a dune form, which steeply rises to elevations ranging between 35 feet to over 60 feet above MSL. The base of the dune form, as shown by Figure 3 (Exhibit 22) of the Update Geotechnical Engineering Report, is steeper than the more landward portions of the dune, likely as a result of wind and wave erosion. This steep section of dune is considered the "dune scarp".

Pursuant to LCP Policy 4.3.9a, the setback for the project should be determined from the dune scarp, not from the Mean High Tide Line. Furthermore, if the geotechnical analysis was to indicate that this break in slope is not a dune scarp, but other slope feature, the LCP is clear that the setback should then be from the point of maximum storm wave run-up. The geotechnical report has noted that the maximum run-up elevation could be 30 feet above MSL, a point even further landward than the possible dune scarp, which appears an elevation of approximately 20 feet above MSL.

**Run-Up Analysis**: The design parameters for the wave run-up analysis contained in the Update Geotechnical Engineering Report assumes a 2:1 coastal bluff on site. This is not consistent with the bluff slopes that will exist after project construction. Thus, the run-up analysis needs to be recalculated to reflect the actual dune slope that will exist after project construction. In addition, several of the model runs for El Niño conditions, using the 2:1 slope, show run-up elevations in excess of 30 or even 35' MSL, yet the report proposed to use a value of +30' MSL. There are many possible reasons for excluding these more extreme run-up conditions for design purposes, but the report did not provide any explanation. The revised run-up analysis should clearly identify the design storm conditions and make clear why any extreme condition analyses of run-up are not being considered in the development of storm wave run-up for the design conditions.

**Tsunamis**: The Update Report references a tsunami run-up elevation developed by Warren C. Thompson in 1984 of only 11.5' MSL, significantly lower than the predicted worst-case storm wave run-up elevation. The basis for this tsunami elevation and any associated calculations have not been provided or analyzed. Recent work by Dr. Costas Synalokis indicates that maximum tsunami run-up reasonable be expected to reach 11 meters (36 feet) for the San Francisco offshore region and 9 meters (29.5 feet) for the Santa Barbara area. Their research did not specifically address the Monterey Bay area, and the geomorphology of Monterey will make site specific tsunami run-up modeling difficult; however, the tsunami estimates from Thompson and from Houston and Garcia should be re-examined in light of the tsunami research that has occurred since 1984. The tsunami estimates should be revised to address more recent studies regarding maximum tsunami run-up and the site conditions that will exist after project construction. Until this occurs the project can not be found consistent with the requirement of LCP Policy 4.3.11 prohibiting development in the tsunami run-up zone unless adequately mitigated.

**Effects of Grading within the Setback Area**: The proposed project would grade all the dunes seaward of the development down to a constant elevation of about 22 feet above MSL (please see Exhibit 20). This grading in the dunes could have several affects that are not adequately addressed by the Update Geotechnical Engineering Report.

First, since the maximum wave run-up will exceed the elevation of the dunes by several feet, the entire area seaward of the development could be routinely inundated by storm waves, thereby exposing the structure and the public to flooding hazards, inconsistent with the requirements of LCP Policy 4.3.8.

Overtopping of the coastal bluff/foredune area by storm wave run-up presents risks not only to the people who may be present between the bluff and the development, but to people and property in the proposed underground parking garage as well. While the parking garage entrance will be at an elevation of 35 feet above MSL, the walls of the parking structure may be exposed to wave uprush. The revised wave uprush analysis may help identify the frequency of this exposure. Notwithstanding the conditions of local approval that require the walls of underground parking areas to be waterproofed to the satisfaction of the City engineer, there possibility remains for the walls of the parking structure to leak, causing water to enter the underground parking structure. Compounding this concern is the fact that the engineering design of the underground waterproof walls has yet to be developed. Instead, condition 31 of the City's approval requires that these plans be developed at the building permit stage. This conflicts with LCP Policies 4.3.11 and 4.3.12, which specifically require mitigation measures for tsunami hazards to be determined by a site-specific geologic investigation, and allow new development to be approved only if natural hazards can be mitigated as recommended in the geologic report. Moreover, locating the development in an area subject to storm wave inundation is in direct conflict with LCP Policy 4.3.10 encouraging the clustering of development away from potentially hazardous areas.

Second, it is unlikely that the area seaward of the development complex will maintain this low elevation unless it is regularly graded. The Update Report has not considered how this modification to the foredune will affect wave erosion and run-up. As noted in the report, there has been a recent landward movement of the dunes. The creation of a flat dune pad, rather than a steeply sloped duneface could accelerate the historic rates of erosion and landward dune movement. The Update Report has not addressed the anticipated changes in erosion rates for this modified dune area compared with the current active dune profile.

**Modification to Wind Transport**: Wind is a major factor in the formation of dunes. The geotechnical report notes that the proposed development will cause a notable reduction the amount of sand blown onto the highway landward of the buildings. The buildings will interfere with both landward and seaward sand transport. In addition, the buildings will alter wind patterns on the property, creating eddies and backdrafts that will add to the deflation and modification of the seaward and adjacent dunes. This affect has not been considered in the analysis of project impacts.

**Percolation Basin**: As shown by Exhibit 20, drainage from the project will be routed to a percolation basin near the northern property boundary. Regular saturation of this dune area could alter erosion characteristics and the natural migration of the site's dune forms. Also, the percolation basin may quickly fill in with sand and will require regular maintenance to remain functional. The Update Report has not addressed the maintenance requirements of the basin or its affects on erosion.

**Final Identification of the Erosion Setback Line**: The Moffat and Nichol City of Sand City Shore Erosion Study provides a useful methodology to determine shoreline trends. It is useful information

for the analysis of shoreline erosion. This information should be considered with site topography and characteristics to establish setbacks, consistent with the methodology established by the LCP. As described above, the LCP requires setbacks to be determined either from the dune scarp or the maximum expected storm wave run-up as a starting point, rather than from the MHT line as proposed by the project's geotechnical report.

In addition, there will a number of project factors, such as the percolation basin, the shearing off of the seaward dunes, poor consolidation of the areas of fill, and the modifications to wind patterns, that will make it very difficult to anticipate future erosion from historic patterns. The elimination of sand mining is a positive factor for future shoreline stability; however, all the other proposed project components could be seen to have an adverse effect on future shoreline stability. Thus, a more complete examination of these factors and their effects on shoreline stability is needed before a setback location that could assure 50 years of protection of the development from erosion can be determined with a relatively high degree of certainty.

Finally, due to the high erosion risks present at the project site, no development could be considered safe in perpetuity. As noted by the project geologist in a letter dated 23 July 1998, "Geologically speaking, nothing on this earth is in perpetuity." Even with acceptable setbacks, if historic trends continue, none of the proposed development on the seaward portion of this site should be expected to remain safe much beyond the given 50 year economic life.

Based on these risks, it is important to acknowledge the limited lifespan of the proposed project through, among other means, prohibiting the future construction of a seawall or some other shoreline protective device on the site. Such structures would pose significant adverse impacts to sensitive habitats and public access and recreation opportunities, inconsistent with other LCP and Coastal Act policies identified elsewhere in this report. Accordingly, the project should also be conditioned in a manner that requires the development to be either deconstructed, or relocated to a non-hazardous area of the site, when it can no longer be safely occupied. In addition, the significant erosion and flood hazards present at the project site should be officially recognized by the property owner in the form of a deed restriction, as required by LCP Policy 4.3.15. None of these measures has been incorporated in to the City's approval of the project.

4. Conclusion

Based upon the unresolved issues detailed above, it is impossible to find the project approved by Sand City consistent with LCP standards concerning natural hazards. It is anticipated that most of these issues can be successfully resolved through additional review and analysis, the consideration of alternative project designs, and the incorporation of additional permit conditions. However, given the fundamental unresolved issues regarding the availability of water to serve the project and its impacts on Environmentally Sensitive Habitats previously discussed, the project must be denied.

I. Traffic and Circulation

1. LCP Requirements

LCP Policy 6.4.11 states:

> New development shall be approved only where water and sewer services are available and adequate; and where adequate circulation and parking has been provided for.

In addition, LCP Policy 6.4.23.a states:

> Development within the Coastal Zone shall insure public safety by providing for:
> a) adequate ingress and egress for emergency vehicles

LCP Policy 6.4.24 states:

> Require future development in the Coastal Zone area to provide safe adequate streets, parking and loading.

2. Project Analysis

Primary access to the project site is provided by Highway One, via the Fremont Boulevard interchange (also referred to as the Ord Village Interchange). Local streets that will also provide access to and from the project include, but are not limited to, California Avenue, Ord Avenue, Monterey Road, Fremont Boulevard and Del Monte Boulevard. A map of the existing local roadway network is attached to this report as Exhibit 16. The Highway One intersection north of the Fremont Boulevard Interchange is the Fort Ord Main Gate, and the Highway One intersection to the South is the Highway 218 Interchange.

Recent development locally, as well as in the region, has had a significant impact on these streets and intersections, as well as on Highway One capacity and Levels of Service. According to the information presented on pages 165 - 166 of the Final EIR, some of the most heavily impacted roadways under existing conditions include:

- The intersections of Fremont Boulevard and the Highway One northbound on-ramp and southbound off-ramp, which operate at a Level Of Service (LOS) of D[14] during both morning and evening peak traffic hours.

- The intersections of Fremont Boulevard and Military Avenue and Del Monte Boulevard, which operate at LOS E[15] both during the morning and evening peak traffic hours.

[14] Defined on page 166 of the Final EIR as "Approaching unstable traffic flow where small increases in volume could cause substantial delays. Freedom to maneuver within the traffic stream is noticeably limited. Comfort and convenience are low and minor incidents can be expected to create queing."

[15] Defined on Page 166 of the Final EIR as "Operations characterized by high density with little room to maneuver within the traffic stream at speeds that still exceed 50 mph. Any disruption to the traffic stream, such as vehicles

- The intersection of Fremont Boulevard and Playa Avenue, which operate at LOS D during both morning and evening peak traffic hours.

- Highway One between the Highway 218 interchange and the Fremont boulevard interchange, which operate at a LOS E in the southbound direction during the morning peak traffic hour, and a LOS D in the northbound direction during the evening peak traffic hour. According to the Congestion Management Plan (CMP) developed by the Transportation Management Agency for Monterey County (TAMC), this section of Highway One currently operates at a Standard LOS E.

- Highway One between the Fremont Boulevard interchange and the Fort Ord Main Gate, which, according to TAMC's CMP operates at a Standard LOS D.

In commenting on the Draft EIR, the California Department of Transportation (Caltrans) states that the intersections of Fremont Boulevard and the Highway One northbound on-ramp and the south bound off-ramp, which would be the primary intersection serving the project, are currently operating at LOS F[16] during peak periods. Caltrans also questions the EIR's identification of LOS E for Highway One between Fremont Boulevard and the interchange with Highway 218, based on their observation that southbound traffic regularly backs up from north of Fremont Boulevard to south of Highway 218. (Please see Exhibit 14 for a copy of Caltrans' comments on the Draft EIR.)

The tables provided on pages 123 of the Draft EIR further illustrate that, independent of the proposed project, these adverse traffic conditions are expected to get worse as the newly developed Edgewater Shopping Center reaches full occupancy:

- The intersections of Fremont Boulevard with the Highway One northbound on-ramp and southbound off-ramp will degrade from an existing LOS D to LOS E in the morning peak traffic hour.

- The intersections of Fremont Boulevard, Military Avenue, and Del Monte Avenue will degrade from an existing LOS E to LOS F during both the morning and evening peak traffic hours.

- The Fremont Boulevard and Playa Avenue intersections will degrade from LOS D to LOS E in the peak morning hour, and from LOS D to LOS F in the peak evening hour.

According to page 124 of the Draft EIR, the originally proposed project (597 units) would generate an additional 4,831 trips per day on average. This would contribute 321 additional trips during the peak morning traffic hour, and 380 trips during the peak evening traffic hour. As presented on pages 129 – 130 of the Draft EIR, the only intersection that would be adversely affected by this increase is at

---

changing lanes or entering from ramps, can cause a disrupted wave that propagates throughout the upstream traffic flow and produces serious breakdowns with extensive queing."

[16] Defined on page 166 of the Final EIR as "Forced flow operations. Speeds are reduced substantially and stopages may occur for short or long periods of time because of downstream congestion."

California Avenue and the Highway One northbound off-ramp, which would degrade from LOS C to LOS D.

In order to assess traffic impacts generated by the 495 unit project approved by the City, it can be assumed that the reduction in the number of units per land use will result in a proportional reduction in the number of trips generated by each land use. These calculations, derived from the trip generation estimates for the original project included on page 124 of the Draft EIR, are provided in Table 1 on page 49 of this report.

The increase in traffic generated by the original project, in and of itself, was not considered to be a significant impact by the EIR, especially in light of the traffic mitigation measures proposed by the applicant. These mitigation measures, as presented on pages 130 – 132 of the Draft EIR include:

- Reconfiguration of the approach to the to the California Avenue/Highway 1 northbound off-ramp intersection to provide a southbound left turn lane. Even with this improvement, the LOS at this intersection would remain at D.

- Implementing an alternative transportation program, targeted to reduce employee trips. The proposed program involves adding a new bus stop adjacent to the project (if Monterey –Salinas Transit will extend bus Line 20), incorporating a bicycle trail into the project, and developing off-peak work hours for employees, deliveries, and maintenance workers. While the EIR estimates that this can achieve an overall reduction in project trip generation of 15%, it is not expected to improve the LOS at the Fremont Boulevard/Highway One intersection. In addition, Caltrans comments on the Draft EIR describe the assumption that a 15% reduction can be achieved as "highly questionable".

With the above mitigation measure, the EIR concludes that the project will not diminish the levels of service below baseline conditions (i.e., the levels of service anticipated upon buildout of the Edgewater Shopping Center). In fact, the table on page 129 of the Draft EIR indicates that the project's mitigation measures will improve the intersection of Fremont Boulevard with the Highway One northbound on-ramp and southbound off-ramp from LOS E under baseline conditions to LOS D during the morning peak hour.

However, according to the Levels of Service estimated on pages 173 – 174 of the Final EIR, even with the proposed mitigation measures, the originally proposed (597 unit) project's traffic impacts, *combined with the traffic generated by other reasonably foreseeable development within the project area*, would exacerbate existing traffic problems further:

- The intersection of California Avenue and the Highway One northbound off ramp will degrade from LOS C to LOS F during the peak morning hour, and from LOS D to LOS F in the peak evening hour.

- The intersection of Fremont Boulevard and the Highway One ramps would degrade from LOS E to LOS F, and from LOS D to LOS F in the peak evening hour.

- The intersection of California Avenue and Playa Avenue will degrade from LOS C to LOS F in the peak evening hour.

- The intersection of Fremont Boulevard and Playa Avenue will degrade from LOS E to LOS F during the peak morning hour.

- Northbound Highway One from Highway 218 to the Fremont interchange will degrade from LOS D to LOS E during the peak evening hour.

In addition, as stated on page 172 of the Final EIR, "[t]he southbound segment of Highway 1 between Highway 218 and the California Avenue-Fremont Boulevard interchange is projected to operate at LOS E during the P.M. peak hour …".

Although the cumulative degradation in traffic service described above was based on the original project proposal of 597 units, the proposed reduction in the project to 495 units is not expected to improve this situation. As shown in the above table, the revised project will add over 4,000 trips per day on average, 266 additional trips during the peak morning hour, and 315 additional trips during the peak evening hour. Furthermore, the additional traffic generated by other development expected to occur in the area remains constant. As stated in their comments on the Draft EIR, "Caltrans has great concerns over this or any other development that will generate additional traffic on this section of SR [Highway] 1 or the Coe Avenue [Fremont Boulevard] interchange. Furthermore, until improvements to SR 1 are built, the LOS in this region will continue to decline."

**Table 1: Estimated trip generation of City approved project.**

| Land Use | Number of Units as Originally Proposed | Number of Units as Currently Proposed | Percent Reduction in Number of Units | Trip Generation by Original Proposal | Trip Generation by City Approved Project |
|---|---|---|---|---|---|
| Hotel | 228 | 217 | 5% | 1984 daily average; 153 peak morning hour; 173 peak evening hour | 1885 daily average; 145 peak morning hour; 164 peak evening hour |
| Vacation Ownership Resort | 132 | 100 | 24% | 1,341 daily average; 44 peak morning hour; 63 peak evening hour | 1019 daily average; 33 peak morning hour; 48 peak evening hour |
| Rental Condos | 76 | 45 | 41% | 583 daily average; 53 peak morning hour; 55 peak evening hour | 344 daily average; 31 peak morning hour; 32 peak evening hour |
| Residential Condos | 161 | 133 | 17% | 943 daily average; 71 peak morning hour; 89 peak evening hour | 783 daily average; 59 peak morning hour; 74 peak evening hour |
| **TOTALS** | **597** | **495** | **17%** | **4,831 daily average; 321 peak morning hour; 380 peak evening hour** | **4,010 daily average; 266 peak morning hour; 315 peak evening hour** |

The low levels of service currently being experienced on local roadways and Highway One, particularly LOS E and F being experienced at certain points and times, and the ongoing degradation

of these roadway capacities described above, raise serious questions regarding the proposed project's consistency with LCP Policies 6.4.11, 6.4.23, and 6.4.24. The fact that there is not adequate streets or circulation capacity currently available to serve the development is further evidenced by the fact that the City of Sand City and Caltrans have already established the need to pursue improvements to local roadways and Highway One.

In order to mitigate traffic impacts of the *existing* Edgewater Shopping Center and foreseeable developments in the area (particularly the conversion of significant portions of the former Fort Ord to commercial and residential uses), Sand City and Caltrans entered into a cooperative agreement on January 16, 1996. Pursuant to this agreement, Sand City committed to fund a Project Study Report (PSR) that is subject to the oversight, review and approval of Caltrans. This report is to identify, among other things, the long term improvements needed to allow the Highway One corridor between Highway 218 and the Fort Ord Main Entrance to operate at an acceptable level of service, as well as potential mechanisms to fund such improvements. As stated on page 183 of the Draft EIR, "[t]his study is being undertaken because the City has concluded that short-term improvements such as the addition of turn lanes and adjustment of signal timing are insufficient to address the problem [of future cumulative traffic congestion]".

As reported to the Commission in May 1999, the PSR was in draft form and expected to be completed and approved by Caltrans in June 1999. Since that time, the final PSR was released in June 1999, but remains to be approved by Caltrans. The preferred alternative presented by the final PSR includes, but is not limited to, the following components:

- Construction of a new Highway One "diamond" interchange between Fremont Boulevard and the Fort Ord main entrance (Light Fighter Drive). This involves the development of a new two lane structure over Highway One, with new on- and off-ramps on the west and east sides of the freeway (4 new ramps).

- Widening Highway One from to a six-lane facility with 3 through lanes in each direction between Route 218 and the Fort Ord Main Entrance. (The majority of this expansion can be accommodated within the existing Highway median.)

- Widening the existing Highway One southbound on-ramp to two lanes.

- Widening California Avenue to three lanes, extending it into the Monterey Bay Shores Resort project, and modifying its intersections with Highway One ramps.

- Revisions to Old Monterey Road, Monterey Road, Del Monte Boulevard, and Military Avenue where they intersect with Fremont Avenue.

- Adding a new lane to the existing Highway One northbound on-ramp at Fremont Boulevard, and adding a new two lane on-ramp from California Avenue that will merge with the Fremont on-ramp.

The above projects have potential impacts on coastal resources, including environmentally sensitive habitats and visual resources, which have yet to be evaluated, and will need to be considered during the required Coastal Development Permit review(s). It is also important to note that the PSR remains subject to the review and approval of Caltrans. There is the potential that additional improvements, beyond what is currently proposed by the preferred alternative, will be deemed to be necessary to adequately address current and future circulation needs. Thus, it is premature to assume that the roadway additions and modification proposed by the Draft EIR will ensure that there will be adequate circulation capacities to serve the proposed development and other future development. It is also not clear that the roadway expansions and modifications necessary to accommodate such development will be consistent with relevant coastal development policies.

Notwithstanding the significant unresolved issues associated with the PSR, the City's approval of the Monterey Bay Shores Resort relies heavily on the PSR to provide the necessary mitigation for the project's share of cumulative traffic impacts. Condition 37 of the City's approval requires:

> Prior to the recordation of the final tract map, the developer or any successor in interest shall provide surety bond(s) or other appropriate security acceptable to the City attorney guaranteeing a contribution of a pro-rata share of the funding shortfall for the implementation of the recommended design modification alternative identified in the currently-developing Project Study Report. Said surety shall be in the amount not to exceed 5 percent of the cost of planned improvements necessary for satisfactory cumulative traffic condition at the Ord Village [Fremont] interchange shall be required prior to the recordation of the final tract map. Said contribution shall not exceed $1.5 million and shall be based on the project's prorata share of cumulative impacts as reported in the Final EIR for the project . The fee shall be earmarked for future improvements to the Highway One and the Ord Village Interchange.

In addition, Condition 38 of the City's approval requires:

> The applicant, or other successor in interest shall enter into an agreement to not protest the inclusion of the project in a City or region-wide assessment district, should one be formed, for the purpose of funding the related construction of a project that will improve the operation of the Ord Village interchange and Highway One from Route 218 to the Fort Ord Main Gate. The applicant, or other successors in interest will receive credit for any payments that were made pursuant to other conditions to improve the interchange if any of those monies are attributable to the improvements that are being financed by the assessment district. A note shall be placed on the final tract map acknowledging said agreement. The final tract map shall not be recorded until this agreement has been executed.

The fundamental deficiency of the above conditions is that they do not ensure that there is, or will be, adequate roadway capacity to serve the project as required by LCP Policies 6.4.11 or 6.4.24. Clearly, the City has made an effort to ensure that the project contributes an appropriate proportion of the cost necessary to expand and modify local roadways and Highway One to meet existing and future

demands. However, the specific details of what roadway expansions and modifications are needed to effectively accommodate these demands have yet to be resolved. Furthermore, the environmental impacts of roadway development, and the consistency of such development with applicable regulations (including the Sand City LCP and the Coastal Act), remain to be addressed. Even if the details of the necessary roadway improvements were known and could be determined to be consistent with regulatory standards, there is nothing within the City's approval or project description that ensures that they would be implemented prior to the construction of the project. Such improvements are necessary to address deficient levels of service that currently exist along Highway One, and along Fremont Boulevard, within the immediate vicinity of the project.

3. Conclusion:

As detailed above, there is not adequate roadway capacity available to serve the proposed development under existing circumstances; portions of Highway One and many of the local intersections that will be impacted by the project are currently operating at LOS E and F during peak periods. As a result, the project can not be found to be consistent with LCP Policy 6.4.11, which requires that new development be approved only where adequate circulation has been provided for. Such levels of service, almost by definition, do not provide adequate circulation given the extreme levels of congestion they reflect. The lack of adequate circulation to serve the project also raises question regarding project conformance with LCP Policy 6.4.23.a, which requires development to insure public safety by providing for adequate ingress and egress for emergency vehicles. Although the project, independent of other anticipated development in the area, does not directly aggravate this situation, it also does not change this current less than adequate circulation capacity. Moreover, as conditioned by the City, it is unknown whether or when the increasing cumulative impacts and inadequate road capacity in the vicinity of the project will be resolved.

The improvements necessary to correct existing circulation deficiencies, and the increase in traffic congestion that will result from cumulative development in the area, have yet to be determined, analyzed, and permitted. The process to resolve these issues, however, is currently underway, via the Project Study Report (PSR) described above. Until this report is completed and accepted by the relevant regulatory agencies, the project can not be found to be consistent with LCP Policy 6.4.11 or Policy 6.4.24, which requires future development to provide safe adequate streets, parking and loading.

Options available to the applicant and the City of Sand City to resolve this situation are: to incorporate additional and specific roadway improvements as part of a revised project, in a manner that will ensure that the roadways needed to serve the project operate at an acceptable level (e.g., no lower than LOS D) before it is constructed; or, to coordinate the timing of a revised project so that development does not commence until all necessary regulatory approvals have been obtained in order to implement the PSR.

J. Public Access and Recreation

1. LCP Requirements

LCP Policy 2.3.4 provides:

> Work with landowners and public agencies to develop and manage vertical and lateral accessways in the general locations shown on Figure 4. Future developments shall implement safe accessways and improvements as determined by the City. Site specific locations shall be developed as part of future development proposals, and according to guidelines established by the City. The following criteria shall be used to determine the exact location of accessways.
>
> a) Accessways should be located at intervals commensurate with the level of public use.
> b) Accessways should be sited where the least number of improvements would be required to make it usable by the public, where support facilities exist or can be provided, where public safety hazards are minimal, and where resource conflicts can be avoided or mitigated.
> c) Vertical accessways to the shoreline should be located in areas where there is sufficient beach area, and should be distributed throughout an area to prevent crowding, parking congestion, and misuse of coastal resources.
> d) Accessways and trails should be designed and sited to:
>
> 1) minimize alterations of natural landforms, conform to existing contours, blend in with the visual character of the setting, and be consistent with the City's design standards;
> 2) prevent unwarranted hazards to land and public safety;
> 3) provide for privacy of adjoining residences and minimize conflicts with adjacent or nearby established uses, and be wide enough to permit placement of a trail and/or fence and a landscape buffer;
> 4) prevent misuse of sensitive coastal resource areas; and
> 5) be consistent with military security needs.
>
> e) Coastal access trails should not be located in areas of high erosion or fire hazard or in areas hazardous to public safety (including blufftop areas where bluff stability is a concern), unless the trail is designed and constructed so that it does not increase the hazard potential, or if it is required to correct abuse by existing access use.

LCP Policy 2.3.9 states:

> New improved accessways shall not be made available for public use until public or private agencies responsible for managing the accessway have addressed the following management concerns:
>
> a) identification of the types of uses to be allowed;
> b) the need for any seasonal restrictions;

c) the type of improvements needed, such as signs, gates, trash receptacles, boardwalks, restrooms;
d) the proposed location, type and amount of parking facilities; and
e) identification of the number of users that can be supported.

LCP Policy 2.3.11 requires:

> Ensure provision of adequate parking for designated pedestrian accessways. Require provision of public parking as part of developments at a rate of 10 percent above the project's total required parking. The means of providing public parking areas will be the responsibility of State and local governmental entities and private development proposals. The following will be pursued where feasible and consistent with the Plan:
>
> a) utilization of State of California Parks Department Properties to provide public parking and other public services and amenities, which provide quick and easy access to beach areas;
> b) abandonment, when appropriate, of some City paper streets, which then could be utilized for public parking strips, or traded for adjacent properties to form a more logically shaped parking lot;
> c) the City shall require approved development plans to include a provision for public parking on-site, or provide the property off-site, but in a convenient location to the beach areas, or be assessed an in-lieu pro-rata fee that the City could utilize for public parking and maintenance purposes.
>
> Parking areas should be located in geologically stable areas where they would not contribute to excessive erosion or slope failure. Parking areas shall be screened from public viewpoints through landscaping, berming or other appropriate measure consistent with the Design Standards required in Section 5.3 of this Plan.

LCP Policy 3.3.9 requires:

> Ensure provision of adequate public beach recreational areas for public use commensurate with future population growth and development, and compatible with existing development. Require the dedication of all sandy beach areas seaward of the toe of the dune, bluff or shoreline protection device as a condition of future development.

LCP Policy 6.4.1.k., in carrying out Public Recreation Land Use Designations established on the site by LUP Figure 11 (attached as Exhibit 9), states:

> Allow public parks, picnic areas, parking areas, public vista points, sandy beaches and accessways which are publicly owned or over which access easements are to be required as a condition of development. In addition to areas designated public recreation in Figure 11, public recreation also means public uses within development projects such as picnic areas, wind shelters, promenades or other indoor public recreational areas; other support facilities for public recreational uses; and controlled public access and/or educational programs in areas of dune restoration programs.

LCP Policy 6.4.1, as amended by LCP Amendment 2-97, states, in relevant part:

> The described densities, both above and below, represent a maximum. As required by applicable policies of the LCP, permitted development intensities shall be limited to those which address constraints including, but not limited to: *public access and recreation needs (including adequate public access and recreation facilities inland of the 50-year erosion setback line)* … (Emphasis added.)

2. Coastal Act Requirements

Coastal Act Section 30210 provides:

> In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30212(a) states:

> (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
>
> (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Coastal Act Section 30252 provides:

> The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

3. Project Analysis

**Proposed Access Improvements and Dedications**

The Applicant has proposed a substantial public access package as part of the project, including a vertical accessway to the beach along the northern boundary of the project, and a lateral accessway along the beach. The lateral access area includes the entire portion of the site seaward of the 20-foot contour, which generally corresponds to the toe of the foredune/coastal bluff, and totals approximately 4.2 acres. Both the vertical and lateral access areas will be placed in a public access easement, totaling 8.8 acres (8.1 acres of which are located above the mean high tide). The project will also provide a public vista point in the northwestern corner of the site, in the same area that vertical access to the beach will be provided (please see Exhibit 4). In addition to lateral access along the beach, condition 2 of the City's approval requires a lateral public access boardwalk and easement along the coastal bluff, subject to consistency with the Habitat Conservation Plan. A twenty nine space parking area for the public and "overflow" parking is proposed in the north-east corner of the site. Finally, a Class II bike path (i.e., bike lane) will be provided along proposed extension of Sand Dunes Drive necessary to serve the project until the entrance to the resort, and will transition into a Class III bike path (i.e., signed bike route) for the remainder of this roadway extension.

**Issues Presented by the Access Plan for the Project**

The Sand City LCP and the Coastal Act both include a number of policies which encourage, support and mandate the provision of public access within shoreline projects such as this one. Indeed, providing maximum access to the shoreline for the public is a priority of the Coastal Act and of the

LCP certified as consistent with this legislation. The provision of access is, however, tempered by another Coastal Act priority: the preservation of environmentally sensitive habitats. Following the lead of the Coastal Act, the Sand City LCP also includes a number of policies designed to protect these sensitive areas. As detailed in the Environmentally Sensitive Habitat findings of this report, the entirety of this site is composed of sensitive dune habitat. Confronted with essentially two priorities, habitat protection and public recreational use, which appear to be conflicting in many ways, the issue here is finding the appropriate balance between access and natural resource protection. The following analysis looks at each component of the access program for this site and discusses its adequacy vis-à-vis the LCP and Coastal Act access direction; and identifies potential conflicts with habitat protection policies.

**Public Access Easement Areas**

The proposed access program includes areas of the site to be set aside for both vertical and lateral public access and for public parking which generally correspond to the Public Recreation land use designation for the site illustrated by LUP Figure 11 (Exhibit 9). Although this is the principal area of the site designated by the LCP for recreational use by the general public, activities in this area will be restricted to achieve dune restoration proposed as part of the project. As approved by the City, this area would also be used for stormwater percolation. Percolation basins are essentially engineered depressions to accommodate seasonal drainage until their contents can be absorbed into the underlying sand. As such, they are unusable for recreational activities for part of the year, and also may be unsuitable for dune habitat restoration because of seasonal ponding.

The proposed lateral easement is located along the entire shoreline frontage of the site and extends landward to the 20' contour, taking in all of the gently sloping beach and a portion of the first line of dune. A condition of City approval adds a lateral, blufftop trail to the lateral component of the project's access program. Public access and recreation in easement areas inland of the coastal bluff will however be restricted to boardwalks in order to protect dune restoration areas. Public access and recreation on sandy beach areas will be restricted to avoid impacts to Western snowy plovers during the nesting season.

LCP Policies 2.3.4.e and 6.4.1 require that public access facilities be located sufficiently inland of the 50-year erosion setback line. As detailed in the Natural Hazard findings of this report, the potential for shoreline erosion to threaten the proposed development, including the proposed access improvements, has not been adequately addressed. The lateral public accessway proposed along the beach as part of the project, as well as the lateral bluff top accessway required by the City, may be subject to coastal erosion that could prevent the public from being able to traverse the project site along the shoreline. The applicant asserts that the proposed public access easements will move inland as erosion occurs and the shoreline recedes. However, neither the project as proposed nor the City's conditions of approval appear to indicate that this is the case. In the event that shoreline erosion consumes the beach and bluff-top area on which lateral access will be provided, the general public will lose its ability to travel laterally along the shoreline. As a result, as currently approved by the City, the project can not be found to be consistent with Coastal Act Section 30212(a) or LCP Policy 2.3.4.e.

**Public Parking**

Parking to serve public access and recreation will be located in the northeast corner of the site, adjacent to the proposed vertical access trail. This parking area may not always be available for public use however. As described on page 27 of the project's Habitat Protection Plan: "The parking areas provided for beach access will be considered for closure during the critical nesting season if heavy use is anticipated and snowy plovers are present in the area." It is also labeled on project plans as "public parking and overflow" spaces and described as an "overflow parking area" in the projects Access, Signage and Planting Plan. Thus, these spaces are not exclusively provided for public access and recreation purposes and may be consumed by project guests and residents or may be periodically closed altogether to protect nesting plovers.

In order to meet the LCP's requirement that new development provide a number of public parking spaces equivalent to 10% of the total number of spaces required to serve the project (LCP Policy 2.3.11), condition 4 of the City's approval requires:

> For each phase of the visitor-serving portions of the project, a minimum of 10 percent additional parking shall be installed as public parking (over the required amount for the visitor-serving uses). The location and signage for this public parking shall be approved by the CDD [Community Development Director] prior to the issuance of any building permit for the project.

The City's approval is inconsistent with LCP Policy 2.3.11 because it applies the 10% requirement to the visitor-serving components of the project only, rather than the entire project; no public parking will be provided as part of the development of the 133 residential condominium units. The provision of this parking is important not only to accommodate public access on the site, but also to assure adequate public access facilities in the vicinity of the project, in light of the increased demand for such facilities generated by the MBS development.

In addition, the City's reliance upon future plans to identify where and how the necessary public parking will be provided, does not provide the necessary assurances that such parking will adequately serve public access and recreation needs. For example, neither the proposed project nor the City's conditions specify a location for public parking to ensure that they effectively support coastal access and recreation for the general public. Nor do they include any signage provisions to inform the general public that such parking is available, and to direct the public to such parking. Without such information, it is not clear that the project will effectively carry out the LCP and Coastal Act access and recreation policies identified above.

**Provision of Maximum Access Consistent with Resource Protection**
Both the LCP and the Coastal Act require that coastal access and recreation activities on the site and in the region, by both project guests, residents, and the general public be provided and managed in a manner that effectively protects natural resources. Restrictions on public access and recreation, however, must be developed in a manner that achieves effective resource protection while maximizing coastal access and recreation opportunities for the general public. Adequate protection for the dune habitat may mean that intensive public use and recreational activities within these areas will be significantly limited. In order to achieve an appropriate balance between access and sensitive habitat protection, a regional examination is warranted to identify where public access and recreation activities can be most appropriately maximized and accommodated consistent with resource protection needs.

Since LCP certification, a large portion of the City has been acquired for public park and open space purposes, including the coastal area south of Tioga Avenue, and the old landfill north of Tioga Avenue and immediately south of the project site. According to City staff, this results in approximately 80% of the City's coastal area west of Highway One as being available for public open space. At this point, however, public ownership does not equate with availability for public use. The actual establishment of public parks and facilities necessary to allow for public access and recreation in these areas, such as public parking, has not been accomplished, and will, in any case, be subject to future reviews and approvals, including reviews by the U.S. Fish and Wildlife Service to ensure that increased public use of these areas will not adversely affect threatened and endangered dune species. It is therefore premature to conclude that the proposed project's restriction of public access and recreation opportunities within the Public Recreation area specifically designated by the LCP will be offset by the increase in public access and recreation opportunities elsewhere in the City. In fact, adverse impacts of the proposed project on dune habitats within the project vicinity may necessitate stringent controls on public access and recreation within the dunes elsewhere in the City, including those portions currently in public ownership, in order to protect and enhance the reduced habitat areas that remain.

As detailed in the Environmentally Sensitive Habitat findings of this report, the Habitat Conservation Planning process required under the federal Endangered Species Act will provide much needed information regarding habitat values and the amount and types of uses that can co-exist with these resources. Accordingly, this information will help identify the management tools that can be used to maximize public access and recreation consistent with the protection of the environmentally sensitive habitats that exist on and adjacent to the project site. Until the natural resource constraints on public access are better understood, it is unclear whether the access program proposed as part of this project is consistent with LCP Policy 3.3.9, which requires the provision of adequate public beach recreational areas for public use commensurate with future population growth and development. As a corollary, before the specific public access management measures necessary to protect sensitive habitats are known, the project also can not be found to conform with Coastal Act Section 30210, which requires that maximum access be provided consistent with the protection of natural resources.

4. Conclusion

The proposed project does not ensure the provision of adequate public access and recreation opportunities, because fundamental issues regarding the provision of such facilities, consistent with the protection of natural resources and shoreline erosion, have yet to be resolved. As a result, the project, as currently proposed, can not be found to be consistent with Coastal Act Sections 30210 and 30212, or with LCP Policies 2.3.4, and 2.3.9. The project's use of the Public Recreation area designated by the LCP for stormwater percolation, habitat restoration and mitigation purposes also presents potential conflicts with these LCP and Coastal Act provisions, as well as with LCP Policy 6.4.1.k. Furthermore, the amount and location of public parking necessary to serve coastal access has not been resolved in a manner that achieves consistency with Coastal Act Section 30252(4) and LCP Section 2.3.11.

Initiation of the required Endangered Species Act consultation, and coordinating the biological information generated through this process with the design, intensity, and management of the proposed project, will be necessary to ensure the appropriate balance between these two Coastal Act and LCP priorities of the habitat protection and maximum public access.

J. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures that would substantially lessen any significant adverse effect that the project may have on the environment.

The City of Sand City certified an EIR for the Monterey Bay Resort Project on December 1, 1998, on the basis that with implementation of the mitigation measures identified by the EIR, the project would not have a significant adverse effect on the environment. The Environmental Impact Report certified by the City is comprised of the Draft EIR and the Final EIR; the final EIR contains responses to the comments received regarding the Draft EIR, and revises and supplements specific sections of the Draft EIR.

As detailed in the findings of this staff report, the Commission has identified environmental impacts of the project that have not been effectively addressed by the certified EIR, particularly with respect to the project's impacts on sensitive dune habitats and limited water resources. As a result, the Commission is unable to find that the proposed Monterey Bay Shores project will not have a significant adverse impact on the environment within the meaning of the California Environmental Quality Act.

In addition, alternatives exist that would lessen or avoid the environmental impacts of the project. The specifics of these alternatives can only be determined in coordination with the provision and analyses of the additional coastal resource information identified as being needed in the findings of this report.